SUPPLEMENTARY MATERIALS – PART I

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Ramon Carresquillo and Angelico Lopez lived a door apart, in concrete barracks where vegetable pickers at Sorantino Farms stay. Both called their cinderblock rooms home. Last Saturday night, Mr. Carresquillo, 38 years old, was blasted to death with a .357 Magnum. Angelico Lopez, 42, was arrested. The police said he shot Mr. Carresquillo over a beer.

But farm workers who lived with them say, well, yes and no. The two men did fight over a Coors, their favorite brand. But they had been fighting — fighting and drinking — for a very long time.

The thinking here is that the living quarters just aren’t big enough for people who don’t get along. And to see the barracks — which are like most places farm workers all over stay — it is easy to understand why.

The men lived in the larger of two squat buildings that look like self-storage lockers, in a compound surrounded by the lush fields of Cumberland County farm country. The building holds two rows of seven rooms on each side. (Women stay on one side, men on the other. Showers and toilets are communal.)

The rooms are dark 10-foot-by-10-foot boxes with concrete floors. They hold cots, small stoves fueled by propane tanks out front and whatever their residents can stuff inside. Privacy is nil. Sneeze and the person across the road might say “Bless you.” Argue and everyone will hear.

After a back-breaking day that may begin at 6:30 and often doesn’t end until 4:30, this is the place workers have to retreat to. Work is hard to get, no one complains.

Even for the migrant worker, living rent-free for a few months while making $5.05 an hour, the situation seems hardly tolerable. But Messrs. Carresquillo and Lopez lived in the compound, year-in, year-out, for five years. Neither had a car. And both had drinking problems. They, like most of the other farm workers, were stuck.

Most of the workers are Latin American or Puerto Rican. Most don’t have cars. They work five days. On days off, some wait for a farm van to take them to Bridgeton, the nearest commercial hub, to shop. Three vans also stop at the compound to sell goods. Two vans sell food — staples like beans and cooked meals, like tacos. The third sells clothes. So once they leave the fields, some workers never leave the compound. It might as well have a razor-wire fence around it.

On weekends, some farm workers walk to the convenience store 10 minutes down the road, return with a six-pack and drink the night away. “What else is there?” said Melecio Duarte Ambalont Jr., who is 66 years old and has been a farm worker all his adult life. “This is a ghetto.”

Despite the conditions, Mr. Carresquillo and Mr. Lopez were among about a dozen workers employed all year by the owner, Dennis Sorantino, who grows squash, zucchini, eggplant and tomatoes on his farm. “They were two good men,” he said. “They used to do most of our irrigating for us.”

But Mr. Carresquillo’s drinking made him ugly, Mr. Ambalont said. “He was a bully,” he said. “He would spend his paycheck, then he’d borrow money from the others and never pay it back.” Or he would bum cigarettes and beer off others, he added.

He and Mr. Lopez apparently argued a lot. Mr. Ambalont, who lived next door to Mr. Carresquillo, said few others dared talk back to the man. “He was a big, muscular man, and if someone asked for their money back, he could get rough.”

Joe Alvarez, the farm workers’ foreman, said he is not the only one to remember the time, last November or December, when Mr. Carresquillo pulled a shotgun on Mr. Lopez. “He had cocked it,” he said. “If that guy had pulled the trigger, the situation here would have been reversed.”

That may have done it for Mr. Lopez, who had a wife and children back home in Puerto Rico. He picked up the .357 Magnum in Florida.

Last Saturday night, Mr. Lopez had some beers in his room. Mr. Carresquillo wanted one.

Some of the seasonal workers whispered that drugs, heroin and cocaine, perhaps, were involved in the altercation. Others said they had rubbed shoulders once too many times, igniting an explosion.

“It’s sad to see one gone and one in jail,” Mr. Alvarez said. “But life goes on.”

By Wednesday, the padlock that the police placed on Mr. Carresquillo’s room was still in place. But Mr. Lopez’s room, where the shooting took place, had been opened and stripped.

“Now,” Mr. Ambalont said, “all they have to do is air the room out and it’ll be ready for someone else.”

The workers’ foreman nodded. Quite a few other people, he said, want that room.
The casebook version (CB 207-209) omits two paragraphs of interest. These follow after the paragraph on CB 209 (beginning, “Thus approaching the case, we find it unthinkable that the farmer-employer ...”), and before the paragraph on CB 108 (beginning, “It follows that the defendants here invaded no possessory right ...”):

It is not our purpose to open the employer’s premises to the general public if in fact the employer himself has not done so. We do not say, for example, that solicitors or peddlers of all kinds may enter on their own; we may assume for the present that the employer may regulate their entry or bar them, at least if the employer’s purpose is not to gain a commercial advantage for himself or if the regulation does not deprive the migrant worker of practical access to things he needs.

And we are mindful of the employer’s interest in his own and in his employees’ security. Hence he may reasonably require a visitor to identify himself, and also to state his general purpose if the migrant worker has not already informed him that the visitor is expected. But the employer may not deny the worker his privacy or interfere with his opportunity to live with dignity and to enjoy associations customary among our citizens. These rights are too fundamental to be denied on the basis of an interest in real property and too fragile to be left to the unequal bargaining strength of the parties.
The United States derived its conception of private property from England, and we have historically looked to old English cases to provide the fundamental composition of the bundle of sticks. Blackstone’s declaration of ownership as a despotic dominion comport well with the American desire to protect property, both for moral reasons and more utilitarian ones—to fuel economic progress and westward expansion. Thus, it is safe to say that the British property system is the nearest to our own in the world. Although the United Kingdom has no constitutional property protection similar to our own Fifth Amendment, Parliament regularly provides compensation for government condemnations. The British position on the right to exclude therefore makes for a particularly apt comparison to our own.

Although British courts for centuries protected the landowner’s right to exclude, Parliament recently enacted a statutory “right to roam” giving the public access to millions of acres of privately owned land. The Countryside and Rights of Way Act of 2000 (CRoW) declares private land that contains mountains, moorland, heath, or downland to be “open country,” on which the public is now free to walk. The private landowner may not bar the public from wandering over these lands. CRoW therefore represents a rather dramatic reallocation of the sticks in the bundle; by negating the right to exclude on private lands, it presents a fascinating study of how the balance of private and public interests in land may be modified.

The British have always held “wandering” in high regard. There are over 130,000 miles of footpaths crisscrossing England and Wales, in many cases directly across farmers’ fields or through meadows full of grazing sheep. Footpaths follow historic trails connecting villages and, because their use by the public predates enclosure, the right to exclude the public from them was not part of the original grant of private property. The legal basis of the extensive British footpath system also comports with American concepts of easements by prescription or implied dedication.

The CRoW Act, however, goes far beyond existing footpath rights of way. Under CRoW, if private land contains mountains, moors, heath, or downland, a government agency may classify it as open country. The landowner then must give the public access to the open country land, for walking or even picnicking; any barriers to access must be removed. Land that is cultivated or used as a garden is exempt, as is land near a house or barn. Notably, the law does not provide any compensation to the affected landowners.

Lands qualifying for access comprise about 12 percent of England and Wales, an estimated four million acres in England alone. Some of the country’s most scenic real estate has been or will be opened up, including areas fought over by nature lovers and landowners for more than a century. Vast landholdings that were previously shut off from the public, including the downs of Wuthering Heights fame in West Yorkshire, and the moors of Dartmoor, currently occupied by the Prince of Wales, will now be accessible.

Even Madonna has been affected by private agreement, which profoundly transformed English village society. Frank A. Sharman, An Introduction to the Enclosure Acts, 10 J. Leg. Hist. 45, 47 (1989). Most enclosures occurred between 1700 and the mid-1800s.

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1 “Downland” is characterized by unimproved grassland, often with scattered scrub.
3 “Enclosure” refers to the privatization of common land over several centuries, through Parliamentary Acts and
CRoW. In 2001, Madonna and her husband Guy Ritchie bought Ashcombe House in south Wiltshire-over 1000 acres-for £9 million (about $16.5 million). Thereafter, the Countryside Agency announced it planned to classify about 350 acres of their estate as downland, which would have opened the property to public access. The famous couple objected at a public inquiry into the matter, arguing that the land was not suitable as open country and that free access would violate their privacy rights under the European Convention on Human Rights. Ultimately, an independent inspector appointed to resolve the matter decided that only 130 acres, all of which was out of sight of Madonna’s home, should be opened to access. Because privacy was not therefore at issue, the inspector declined to consider the privacy aspects of the case.

Although Madonna’s case eventually resulted in a compromise that seemed to please all sides, newspaper and blog commentators mercilessly criticized the singer for an “American” view of property rights that disregarded the needs of the public. Indeed, the Ritchies must have been surprised to find that their heretofore private property could be suddenly opened to public access-in effect the grant of a public easement-without their consent and without compensation. Yet, in Parliament’s view, the Act merely made amends for the loss of public access during the enclosure period and brought a more equitable balance between public and private rights.

CRoW illustrates that even among capitalist countries that place a high value on property right protection, there may be different views of the “essential” nature of the right to exclude. Britain is not alone in this regard. Norway and Sweden have long recognized an even broader “Allemansrätten”-every person’s right to cross the lands of another and even camp there temporarily. Imagine jumping in a canoe and heading down the river, knowing you had the right to pull over and eat lunch or even spend the night wherever you liked. All land is included, except cultivated land and homestead areas. It is even permissible to pick mushrooms, wild berries, and wildflowers on someone else’s land. Interestingly, Allemansrätten are not found in the law books, but rather have developed by custom, which the Scandinavians find unnecessary to codify. The right emerged as an ethical obligation on the part of both the landowner-to allow access-and the visitor-to not disturb the landowner’s privacy or damage his land.

While Britain and the Scandinavian countries understand the private property owner’s legitimate desire for privacy, they also strive to accommodate the public’s interest in access, in ways they believe do not unduly burden private interests. Thus, assuming the benefits of public access outweigh the burden on the landowner, an overall enhancement of societal land use value is obtained. These differing notions of the right to exclude open the students’ minds to the possibility that it need not be absolute, that different allocations of the bundle of sticks may be possible, without causing undue harm to the underlying concept of private ownership. At a minimum, considering comparative property norms helps students grasp that defining property is ultimately an exercise in finding a balance that will best promote the goals of property ownership and meet the needs of society.

Once we accept that a property right is not a given, but rather a product of this balancing, we can ask what the proper scope of the right to exclude in the United States should be. For example, in Rhode Island, private landowners own more than 90 percent of Narragansett Bay’s 350-mile shoreline, severely reducing the possibilities of public access to this scenic resource. Would it be possible to recognize the owners’ desire for privacy while still providing the public greater means to enjoy what is, after all, their beach? What interests would be diminished by recognizing greater access? What interests would be promoted?

Increased access to private lands would not
only promote the public’s interest in recreation, it could also result in psychic and health benefits. Health officials have warned that Americans face an obesity epidemic and about two-thirds of American adults are now classified as overweight. Although the problem is partially due to our diet, of course, Americans also walk, on average, much less than Europeans. Researchers have already identified our land use planning system as a major barrier to creating a culture of walking. Perhaps the right to exclude also plays a role, by increasing the difficulty of walking from one place to another and by placing some of the most inviting territory for a hike off limits. Would it make a difference if you could start a hike by simply hiking across the fields near your house, rather than having to drive to a park or nature preserve many miles away? Advocates of rambling also point to a feeling of community, of common interest in the land that comes from shared access.

Obviously, the right to exclude has important benefits to the landowner. Privacy is an important attribute of property and one of the fundamental desires of those who own land. Public access may limit the uses of property and a landowner may have to increase vigilance and security to protect against damage or theft from the invading public. The landowner may have to invest in fences to separate public and private portions of land. But, as the British determined, the landowner’s concerns may be diminished with regard to certain types of property—it is harder to damage heath, for example, than a cultivated field, and privacy concerns lessen when the land is far from a homestead. In those instances, moreover, the public’s interest in the use of the property is heightened.

By examining these competing policies behind the right to exclude, it is possible to paint with a finer brush. Perhaps the bundle of sticks can be modified without causing undue damage to the interests at its core. . . .
The Privacy and Property Provisions of the European Convention on Human Rights

The European Convention on Human Rights, ETS 5 (1950), entered into force, 1953

The Governments signatory hereto, being Members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which the aim is to be pursued is the maintenance and further realization of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration;

Have agreed as follows:

ARTICLE 1

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

... 

ARTICLE 8

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.


1. Enforcement of certain Rights and Freedoms not included in Section I of the Convention

The Governments signatory hereto, being Members of the Council of Europe,
Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November, 1950 (hereinafter referred to as ‘the Convention’),

Have agreed as follows:

ARTICLE 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. . . .
As used in §§ 381.008-381.00897, the following words and phrases mean:

(1) “Common areas”--That portion of a migrant labor camp or residential migrant housing not included within private living quarters and where migrant labor camp or residential migrant housing residents generally congregate.

(2) “Department”--The Department of Health and its representative county health departments.

(3) “Invited guest”--Any person who is invited by a resident to a migrant labor camp or residential migrant housing to visit that resident.

(4) “Migrant farmworker”--A person who is or has been employed in hand labor operations in planting, cultivating, or harvesting agricultural crops within the last 12 months and who has changed residence for purposes of employment in agriculture within the last 12 months.

(5) “Migrant labor camp”--One or more buildings, structures, barracks, or dormitories, and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises. The term does not include a single-family residence that is occupied by a single family.

(6) “Other authorized visitors”--Any person, other than an invited guest, who is:

(a) A federal, state, or county government official;

(b) A physician or other health care provider whose sole purpose is to provide medical care or medical information;

(c) A representative of a bona fide religious organization who, during the visit, is engaged in the vocation or occupation of a religious professional or worker such as a minister, priest, or nun;

(d) A representative of a nonprofit legal services organization, who must comply with the Code of Professional Conduct of The Florida Bar; or
(e) Any other person who provides services for farmworkers which are funded in whole or in part by local, state, or federal funds but who does not conduct or attempt to conduct solicitations.

(7) “Private living quarters”--A building or portion of a building, dormitory, or barracks, including its bathroom facilities, or a similar type of sleeping and bathroom area, which is a home, residence, or sleeping place for a resident of a migrant labor camp. The term includes residential migrant housing.

(8) “Residential migrant housing”--A building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers, except:

(a) Housing furnished as an incident of employment.

(b) A single-family residence or mobile home dwelling unit that is occupied only by a single family and that is not under the same ownership, management, or control as other farmworker housing to which it is adjacent or contiguous.

(c) A hotel or motel as described in chapter 509, that is furnished for transient occupancy.

(d) Any housing owned or operated by a public housing authority except for housing which is specifically provided for persons whose principal income is derived from agriculture.

(9) “Personal hygiene facilities”--Adequate facilities for providing hot water at a minimum of 110 degrees Fahrenheit for bathing and dishwashing purposes, and an adequate and convenient approved supply of potable water available at all times in each migrant labor camp and residential migrant housing for drinking, culinary, bathing, dishwashing, and laundry purposes.

(10) “Lighting”--At least one ceiling-type light fixture capable of providing 20 foot-candles of light at a point 30 inches from the floor, and at least one separate double electric wall outlet in each habitable room in a migrant labor camp or residential migrant housing.

(11) “Sewage disposal”--Approved facilities for satisfactory disposal and treatment of human excreta and liquid waste.

(12) “Garbage disposal”--Watertight receptacles of impervious material which are provided with tight-fitting covers suitable to protect the contents from flies, insects, rodents, and other animals.

§ 381.0081. Permit required to operate a migrant labor camp or residential migrant housing; penalties for unlawful establishment or operation; allocation of proceeds

(1) MIGRANT LABOR CAMP; PERMIT REQUIREMENT.--A person who establishes, maintains, or operates a migrant labor camp in this state without first having obtained a permit from the department and who fails to post such permit and keep such permit posted in the camp to which it applies at all times during maintenance or operation of the camp commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) RESIDENTIAL MIGRANT HOUSING; PERMIT REQUIREMENT.--A person who establishes, maintains, or operates any residential migrant housing in this state without first having obtained a permit from the department commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) RESIDENTIAL MIGRANT HOUSING; HEALTH AND SANITATION.--A person who establishes, maintains, or operates any residential migrant housing or migrant labor camp in this state without providing adequate personal hygiene facilities, lighting, sewage disposal, and
garbage disposal, and without first having obtained the required permit from the department, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) FINE.--The department may impose a fine of up to $1,000 for each violation of this section. If the owner of land on which a violation of this section occurs is other than the person committing the violation and the owner knew or should have known upon reasonable inquiry that this section was being violated on the land, the fine may be applied against such owner. In determining the amount of the fine to be imposed, the department shall consider any corrective actions taken by the violator and any previous violations.

(5) SEIZURE.--

(a) In addition to other penalties provided by this section, the buildings, personal property, and land used in connection with a felony violation of this section may be seized and forfeited pursuant to the Contraband Forfeiture Act.

(b) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated as follows if the department participated in the inspection or investigation leading to seizure and forfeiture under this section:

1. One-third of the proceeds shall be allocated to the law enforcement agency involved in the seizure, to be used as provided in § 932.7055.

2. One-third of the proceeds shall be allocated to the department, to be used for purposes of enforcing the provisions of this section.

3. One-third of the proceeds shall be deposited in the State Apartment Incentive Loan Fund, to be used for the purpose of providing funds to sponsors who provide housing for farmworkers.

(c) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated equally between the law enforcement agency involved in the seizure and the State Apartment Incentive Loan Fund if the department did not participate in the inspection or investigation leading to seizure and forfeiture.

§ 381.0082. Application for permit to operate migrant labor camp or residential migrant housing

Application for a permit to establish, operate, or maintain a migrant labor camp or residential migrant housing must be made to the department in writing on a form and under rules prescribed by the department. The application must state the location of the existing or proposed migrant labor camp or residential migrant housing; the approximate number of persons to be accommodated; the probable duration of use, and any other information the department requires.

§ 381.0083. Permit for migrant labor camp or residential migrant housing

Any person who is planning to construct, enlarge, remodel, use, or occupy a migrant labor camp or residential migrant housing or convert property for use as a migrant labor camp or residential migrant housing must give written notice to the department of the intent to do so at least 45 days before beginning such construction, enlargement, or renovation. If the department is satisfied, after causing an inspection to be made, that the camp or the residential migrant housing meets the minimum standards of construction, sanitation, equipment, and operation required by rules issued under § 381.0086 and that the applicant has paid the application fees required by § 381.0084, it shall issue in the name of the department the necessary permit in writing on a form to be prescribed by the department. The permit, unless sooner revoked, shall expire on September 30 next after the date of issuance, and
it shall not be transferable. An application for a permit shall be filed with the department 30 days prior to operation. When there is a change in ownership of a currently permitted migrant labor camp or residential migrant housing, the new owner must file an application with the department at least 15 days before the change. In the case of a facility owned or operated by a public housing authority, an annual satisfactory sanitation inspection of the living units by the Farmers Home Administration or the Department of Housing and Urban Development shall substitute for the pre-permitting inspection required by the department.

§ 381.0084. Application fees for migrant labor camps and residential migrant housing

(1) Each migrant labor camp operator or owner of residential migrant housing who is subject to § 381.0081 shall pay to the department the following annual application fees:

(a) Camps or residential migrant housing that have capacity for 5 to 50 occupants: $125.

(b) Camps or residential migrant housing that have capacity for 51 to 100 occupants: $225.

(c) Camps or residential migrant housing that have capacity for 101 or more occupants: $500.

(2) The department shall deposit fees collected under this section in the County Health Department Trust Fund for use in the migrant labor camp program and shall use those fees solely for actual costs incurred in enforcing §§ 381.008-381.00895.

(3) Any existing migrant labor camp or residential migrant housing that is substantially renovated or newly constructed is exempt from the annual application fee described in this section for the next annual permit after the renovations or construction occurred.

(4) Any existing migrant labor camp or residential migrant housing that, during any permit year, has no major deficiencies cited by the department, no uncorrected deficiencies, and no administrative action taken against it is exempt from the annual application fee described in this section for the next annual permit period.

§ 381.0085. Revocation of permit to operate migrant labor camp or residential migrant housing

The department may revoke a permit authorizing the operation of a migrant labor camp or residential migrant housing if it finds the holder has failed to comply with any provision of this law or any rule adopted hereunder. To reinstate a permit for migrant labor camp or residential migrant housing from which a permit has been revoked, the operator shall submit another application with the appropriate fee and satisfy the department that he or she is in compliance with all applicable rules.

§ 381.0086. Rules; variances; penalties

(1) The department shall adopt rules necessary to protect the health and safety of migrant farmworkers and other migrant labor camp or residential migrant housing occupants, including rules governing field sanitation facilities. These rules must include definitions of terms, a process for plan review of the construction of new, expanded, or remodeled camps or residential migrant housing, sites, buildings and structures, and standards for personal hygiene facilities, lighting, sewage disposal, safety, minimum living space per occupant, bedding, food equipment, food storage and preparation, insect and rodent control, garbage, heating equipment, water supply, maintenance and operation of the camp, housing, or roads, and such other matters as the department finds to be appropriate or necessary to protect the life and health of the occupants. Housing operated by a public housing authority is exempt from the provisions of any administrative rule that conflicts with or is more stringent than the federal standards applicable to the housing.
(2) Except when prohibited as specified in subsection (6), an owner or operator may apply for a permanent structural variance from the department’s rules by filing a written application and paying a fee set by the department, not to exceed $100. This application must:

(a) Clearly specify the standard from which the variance is desired.

(b) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility and to prevent a practical difficulty or unnecessary hardship.

(c) Clearly set forth the specific alternative measures that the owner or operator has taken to protect the health and safety of occupants and adequately show that the alternative measures have achieved the same result as the standard from which the variance is sought.

(3) Any variance granted by the department must be in writing, must state the standard involved, and must state as conditions of the variance the specific alternative measures taken to protect the health and safety of the occupants. In denying the request, the department must provide written notice under §§ 120.569 and 120.57 of the applicant’s right to an administrative hearing to contest the denial within 21 days after the date of receipt of the notice.

(4) A person who violates any provision of §§ 381.008-381.00895 or rules adopted under such sections is subject either to the penalties provided in §§ 381.0012, 381.0025, and 381.0061 or to the penalties provided in § 381.0087.

(5) Notwithstanding any other provision of this chapter, any housing that is furnished as a condition of employment so as to subject it to the requirements of the Occupational Health and Safety Act of 1970, 29 U.S.C. § 655, shall only be inspected under the temporary labor camp standards at 42 C.F.R. § 1910.142.

(6) For the purposes of filing an interstate clearance order with the Department of Economic Opportunity, if the housing is covered by 20 C.F.R. part 654, subpart E, no permanent structural variance referred to in subsection (2) is allowed.

§ 381.0087. Enforcement; citations

(1) Department personnel may issue citations that contain an order of correction or an order to pay a fine, or both, for violations of §§ 381.008-381.00895 or the field sanitation facility rules adopted by the department when a violation of those sections or rules is enforceable by an administrative or civil remedy, or when a violation of those sections or rules is a misdemeanor of the second degree. A citation issued under this section constitutes a notice of proposed agency action. The recipient of a citation for a major deficiency, as defined by rule of the department, will be given a maximum of 48 hours to make satisfactory correction or demonstrate that provisions for correction are satisfactory.

(2) Citations must be in writing and must describe the particular nature of the violation, including specific reference to the provision of statute or rule allegedly violated. Continual or repeat violations of the same requirement will result in the issuance of a citation.

(3) The fines imposed by a citation issued by the department may not exceed $500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

(4) The citing official shall inform the recipient, by written notice pursuant to §§ 120.569 and 120.57, of the right to an administrative hearing to contest the citation of the agency within 21 days after the date of receipt of the citation. The citation must contain a conspicuous statement that if the citation recipient fails to pay the fine
within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient is deemed to have waived the right to contest the citation and must pay an amount up to the maximum fine or penalty.

(5) The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must give due consideration to such factors as the gravity of the violation, the good faith of the person who has allegedly committed the violation, and the person’s history of previous violations, including violations for which enforcement actions were taken under this section or other provisions of state law.

(6) Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(7) The department shall deposit all fines collected under §§ 381.008-381.00895 in the County Health Department Trust Fund for use of the migrant labor camp inspection program and shall use such fines to improve migrant labor camp and residential migrant housing as described in § 381.0086.

(8) The provisions of this section are an alternative means of enforcing §§ 381.008-381.00895 and the field sanitation facility rules. This section does not prohibit the department from enforcing those sections or rules by any other means. However, the agency shall elect to use only the procedure for enforcement under this section or another method of civil or administrative enforcement for a single violation.

(9) When the department suspects that a law has been violated, it shall notify the entity that enforces the law.

§ 381.0088. Right of entry

The department or its inspectors may enter and inspect migrant labor camps or residential migrant housing at reasonable hours and investigate such facts, conditions, and practices or matters, as are necessary or appropriate to determine whether any person has violated any provisions of applicable statutes or rules adopted pursuant thereto by the department. The right of entry extends to any premises that the department has reason to believe is being established, maintained, or operated as a migrant labor camp or residential migrant housing without a permit, but such entry may not be made without the permission of the owner, person in charge, or resident thereof, unless an inspection warrant is first obtained from the circuit court authorizing the entry. Any application for a permit made under § 381.0082 constitutes permission for, and complete acquiescence in, any entry or inspection of the premises for which the permit is sought, to verify the information submitted on or in connection with the application; to discover, investigate, and determine the existence of any violation of §§ 381.008-381.00895 or rules adopted thereunder; or to elicit, receive, respond to, and resolve complaints. Any current valid permit constitutes unconditional permission for, and complete acquiescence in, any entry or inspection of the premises by authorized personnel. The department may from time to time publish the reports of such inspections.

§ 381.00893. Complaints by aggrieved parties

Any person who believes that the housing violates any provision of §§ 381.008-381.00895 or rules adopted thereunder may file a complaint with the department. Upon receipt of the complaint, if the department finds there are reasonable grounds to believe that a violation exists and that the nature of the alleged violation could pose a serious and immediate threat to public health, the department shall conduct an inspection as soon as practicable. In all other cases where the department finds there are reasonable grounds to believe that a violation exists, the department shall notify the owner and the operator of the
housing that a complaint has been received and the nature of the complaint. The department shall also advise the owner and the operator that the alleged violation must be remedied within 3 business days. The department shall conduct an inspection as soon as practicable following such 3-day period. The department shall notify the owner or the operator of the housing and the complainant in writing of the results of the inspection and the action taken. Upon request of the complainant, the department shall conduct the inspection so as to protect the confidentiality of the complainant. The department shall adopt rules by January 1, 1994, to implement this section.

§ 381.00895. Prohibited acts; application

(1) An owner or operator of housing subject to the provisions of §§ 381.008-381.00897 may not, for the purpose of retaliating against a resident of that housing, discriminatorily terminate or discriminatorily modify a tenancy by increasing the resident’s rent; decreasing services to the resident; bringing or threatening to bring against the resident an action for eviction or possession or another civil action; refusing to renew the resident’s tenancy; or intimidating, threatening, restraining, coercing, blacklisting, or discharging the resident. Examples of conduct for which the owner or operator may not retaliate include, but are not limited to, situations in which:

(a) The resident has complained in good faith, orally or in writing, to the owner or operator of the housing, the employer, or any government agency charged with the responsibility of enforcing the provisions of §§ 381.008-381.00897.

(b) The resident has exercised any legal right provided in this chapter with respect to the housing.

(2) A resident who brings an action for or raises a defense of retaliatory conduct must have acted in good faith.

(3) This section does not apply if the owner or operator of housing proves that the eviction or other action is for good cause, including, without limitation, a good faith action for nonpayment of rent, a violation of the resident’s rental or employment agreement, a violation of reasonable rules of the owner or operator of the housing or of the employer, or a violation of this chapter or the Florida Residential Landlord and Tenant Act.

§ 381.00896. Nondiscrimination

(1) The Legislature declares that it is the policy of this state that each county and municipality must permit and encourage the development and use of a sufficient number and sufficient types of farmworker housing facilities to meet local needs. The Legislature further finds that discriminatory practices that inhibit the development of farmworker housing are a matter of state concern.

(2) Any owner or developer of farmworker housing which has qualified for a permit to operate, or who would qualify for a permit based upon plans submitted to the department, or the residents or intended residents of such housing may invoke the provisions of this section.

(3) A municipality or county may not enact or administer local land use ordinances to prohibit or discriminate against the development and use of farmworker housing facilities because of the occupation, race, sex, color, religion, national origin, or income of the intended residents.

(4) This section does not prohibit the imposition of local property taxes, water service and garbage collection fees, normal inspection fees, local bond assessments, or other fees, charges, or assessments to which other dwellings of the same type in the same zone are subject.

(5) This section does not prohibit a municipality or county from extending preferential treatment to farmworker housing, including, without limi-
tation, fee reductions or waivers or changes in architectural requirements, site development or property line requirements, or vehicle parking requirements that reduce the development costs of farmworker housing.

§ 381.00897. Access to migrant labor camps and residential migrant housing

(1) RIGHT OF ACCESS OF INVITED GUEST.--A resident of a migrant labor camp or residential migrant housing may decide who may visit him or her in the resident’s private living quarters. A person may not prohibit or attempt to prohibit an invited guest access to or egress from the private living quarters of the resident who invited the guest by the erection or maintenance of any physical barrier, by physical force or violence, by threat of force or violence, or by any verbal order or notice given in any manner. Any invited guest must leave the private living quarters upon the reasonable request of a resident residing within the same private living quarters.

(2) RIGHT OF ACCESS OF OTHERS.--Other authorized visitors have a right of access to or egress from the common areas of a migrant labor camp or residential migrant housing as provided in this subsection. A person may not prohibit or attempt to prohibit other visitors access to or egress from the common areas of a migrant labor camp or residential migrant housing by the erection or maintenance of any physical barrier, by physical force or violence, by threat of force or violence, or by any verbal order or notice given in any manner, except as provided in this section. Owners or operators of migrant labor camps or residential migrant housing may adopt reasonable rules regulating access to housing, if such rules permit at least 4 hours of access each day during nonworking hours Monday through Saturday and between the hours of 12 noon and 8 p.m. on Sunday. Any other authorized visitor must leave the private living quarters upon the reasonable request of a person who resides in the same private living quarters.

(3) CIVIL ACTION.--Any person prevented from exercising rights guaranteed by this section may bring an action in the appropriate court of the county in which the alleged infringement occurred; and, upon favorable adjudication, the court shall enjoin the enforcement of any rule, practice, or conduct that operates to deprive the person of such rights.

(4) CIVIL LIABILITY.--Other visitors are licensees, not guests or invitees, for purposes of any premises liability.

(5) OTHER RULES.--The housing owner or operator may require invited guests and other visitors to check in before entry and to present picture identification. Migrant labor camp and residential migrant housing owners or operators may adopt other rules regulating access to a camp only if the rules are reasonably related to the purpose of promoting the safety, welfare, or security of residents, visitors, farmworkers, or the owner’s or operator’s business.

(6) POSTING REQUIRED.--Rules relating to access are unenforceable unless they have been conspicuously posted in the migrant labor camp or migrant residential housing and a copy has been furnished to the department.

(7) LIMITATIONS.--This section does not create a general right of solicitation in migrant labor camps or residential migrant housing. This section does not prohibit the erection or maintenance of a fence around a migrant labor camp or residential migrant housing if one or more unlocked gates or gateways in the fence are provided; nor does this section prohibit posting the land adjacent to a migrant labor camp or residential migrant housing if access to the camp is clearly marked; nor does this section restrict migrant workers residing within the same living quarters from imposing reasonable restrictions on their fellow residents to accommodate reasonable privacy and other concerns of the residents.
This was an action of ejectment in the Circuit court of Buckingham county, brought in February 1846, by the lessee of Elizabeth A. Cobbs [who was an heir of Sarah Lewis] and others against William H. Tapscott. Upon the trial the defendant demurred to the evidence. It appears that Thomas Anderson died in 1800, having made a will, by which he appointed several persons his executor, of whom John Harris, Robert Rives and Nathaniel Anderson qualified as such. By his will his executors were authorized to sell his real estate.

At the time of Thomas Anderson’s death the land in controversy had been surveyed for him, and in 1802 a patent was issued therefor to Harris, Rives and N. Anderson as executors. Some time between the years 1820 and 1825, the executors sold the land at public auction, when it was knocked off to Robert Rives; though it appears from a contract between Rives and Sarah Lewis, dated in September 1825, that the land had, prior to that date, been sold by the executors to Mrs. Lewis for three hundred and sixty-seven dollars and fifty cents. This contract was for the sale by Mrs. Lewis to Rives of her dower interest in another tract of land, for which Rives was to pay to the executors of Thomas Anderson the sum of two hundred and seventeen dollars and fifty cents. This contract was for the sale by Mrs. Lewis to Rives of her dower interest in another tract of land, for which Rives was to pay to the executors of Thomas Anderson the sum of two hundred and seventeen dollars and fifty cents in part of her purchase. In a short time after her purchase she moved upon the land, built upon and improved it, and continued in possession until 1835, when she died. In 1825 the executor Harris was dead, and Nathaniel Anderson died in 1831, leaving Rives surviving him. And it appears that in an account settled by a commissioner in a suit by the devisees and legatees of Thomas Anderson against the executors of Robert Rives, there was an item under date of the 28th of August 1826, charging Rives with the whole amount of the purchase money, in which it is said, “The whole not yet collected, but Robert Rives assumes the liability.”

There is no evidence that the heirs of Mrs. Lewis were in possession of the land after her death, except as it may be inferred from the fact that she had been living upon the land from the time of her purchase until her death, and that she died upon it.

The proof was that . . . [Tapscott] took possession of the land about the year 1842, without, so far as appears, any pretense of title. He made an entry with the surveyor of the county in December 1844, with a view to obtain a patent for it.

The court gave a judgment upon the demurrer for the plaintiffs, and Tapscott thereupon applied to this court for a supersedeas, which was allowed.

Daniel, J. It is no doubt true, as a general rule, that the right of a plaintiff in ejectment to recover, rests on the strength of his own title, and is not established by the exhibition of defects in the title of the defendant, and that the defendant may maintain his defense by simply showing that the title is not in the plaintiff, but in some one else. And the rule is usually thus broadly stated by the authorities, without qualification. There are, however, exceptions to the rule as thus announced, as well established as the rule itself. As when the defendant has entered under the title of the plaintiff he cannot set up a title in a third person in contradiction to that under which he entered. Other instances might be cited in which it is equally as well settled that the defendant would be estopped from showing defects in the title of the plaintiff. In such cases, the plaintiff may, and often does recover, not by the exhibition of a title good in itself, but by showing that the relations between himself and the defendant are such that the latter
cannot question it. The relation between the parties stands in the place of title; and though the title of the plaintiff is tainted with vices or defects that would prove fatal to his recovery in a controversy with any other defendant in peaceable possession, it is yet all sufficient in a litigation with one who entered into the possession under it, or otherwise stands so related to it that the law will not allow him to plead its defects in his defense.

Whether the case of an intrusion by a stranger without title, on a peaceable possession, is not one to meet the exigencies of which the courts will recognize a still further qualification or explanation of the rule requiring the plaintiff to recover only on the strength of his own title, is a question which, I believe, has not as yet been decided by this court. And it is somewhat remarkable that there are but few cases to be found in the English reporters in which the precise question has been decided or considered by the courts.

The cases of Read & Morpeth v. Erington, Croke Eliz. 321; Bateman v. Allen, Ibid. 437; and Allen v. Rivington, 2 Saund. R. 111, were each decided on special verdicts, in which the facts with respect to the title were stated. In each case it was shown that the plaintiff was in possession, and that the defendant entered without title or authority; and the court held that it was not necessary to decide upon the title of the plaintiff, and gave judgment for him. In the report of Bateman v. Allen, it is said that Williams Sergeant moved, “that for as much as in all the verdict it is not found that the defendant had the prior possession, nor that he entered in the right or by the command of any who had title, but that he entered on the possession of the plaintiff without title, his entry is not lawful;” and so the court held.

And in Read & Morpeth v. Erington, it was insisted that for a portion of the premises the judgment ought to be for the defendant, in as much as it appeared from the verdict that the title to such portion was outstanding in a third party; but the court said it did not matter, as it was shown that the plaintiff had entered, and the defendant had entered on him.

I have seen no case overruling these decisions. It is true that in Haldane v. Harvey, 4 Burr. R. 2484, the general doctrine is announced that the plaintiff must recover on the strength of his own title; and that the “possession gives the defendant a right against every man who cannot show a good title.” But in that case the circumstances under which the defendant entered, and the nature of the claim by which he held, do not appear; and the case, therefore, cannot properly be regarded as declaring more than the general rule.

The same remark will apply to other cases that might be cited, in which the general rule is propounded in terms equally broad and comprehensive.

In 2 T.R. 749, we have nothing more than the syllabus of the case of Crisp v. Barber, in which it is said that a lease of a rectory-house, &c., by a rector, becomes void by 13th Eliz. ch. 20, by his nonresidence for eighty days, and that the lessee cannot maintain ejectment against a stranger who enters without any title whatever.

And in Graham v. Peat, 1 East’s R. 244, in which, upon a like state of facts, arising under the same statute, the plaintiff brought trespass instead of ejectment, it was held that his possession was sufficient to maintain trespass against a wrong-doer, the chief justice, Lord Kenyon, remarking, that “if ejectment could not have been maintained, it was because that is a fictitious remedy founded upon title.”

These two cases as reported may, perhaps, when taken in connection, be fairly regarded as holding that mere possession by the plaintiff will justify the action of trespass against an intruder, but is not sufficient to
maintain ejectment. If so, they are in conflict with the earlier decisions before cited. It is to be observed, however, of the first of these cases, that we have no statement of the grounds on which it was decided; and of the last, that it does not directly present the question whether ejectment could or could not have been maintained. And I do not think it would be just to allow them to outweigh decisions in which the precise question was fairly presented, met and adjudicated: The more especially, as the doctrine of the earlier cases is reasserted by Lord Tenterden in the case of Hughes v. Dyball, 14 Eng. C.L.R. 481. In that case, proof that the plaintiff let the locus in quo to a tenant who held peaceable possession for about a year, was held sufficient evidence of title to maintain ejectment against a party who came in the night and forcibly turned the tenant out of possession. In Archibold’s Nisi Prius, vol. 2, p. 395, the case is cited with approbation, and the law stated in accordance with it. In this country the cases are numerous, and to some extent conflicting, yet I think that the larger number will be found to be in accordance with the earlier English decisions. I have found no case in which the question seems to have been more fully examined or maturely considered than in Sowden, &c. v. McMillan’s heirs, 4 Dana’s R. 456. The views of the learned judge (Marshall) who delivered the opinion in which the whole court concurred, are rested on the authority of several cases in Kentucky, previously decided, on a series of decisions made by the Supreme court of New York, and on the three British cases of Bate-man v. Allen, Allen v. Rivington, and Read & Morpeth v. Erington, before mentioned.

“These three cases (he says) establish unquestionably the right of the plaintiff to recover when it appears that he was in possession, and that the defendant entered upon and ousted his possession, without title or authority to enter; and prove that when the possession of the plaintiff and an entry upon it by the defendant are shown, the right of recovery cannot be resisted by showing that there is or may be an outstanding title in another; but only by showing that the defendant himself either has title or authority to enter under the title.”

“It is a natural principle of justice, that he who is in possession has the right to maintain it, and if wrongfully expelled, to regain it by entry on the wrong-doer. When titles are acknowledged as separate and distinct from the possession, this right of maintaining and regaining the possession is, of course, subject to the exception that it cannot be exercised against the real owner, in competition with whose title it wholly fails. But surely it is not accordant with the principles of justice, that he who ousts a previous possession, should be permitted to defend his wrongful possession against the claim of restitution merely by showing that a stranger, and not the previous possessor whom he has ousted, was entitled to the possession. The law protects a peaceable possession against all except him who has the actual right to the possession, and no other can rightfully disturb or intrude upon it. While the peaceable possession continues, it is protected against a claimant in the action of ejectment, by permitting the defendant to show that a third person and not the claimant has the right. But if the claimant, instead of resorting to his action, attempt to gain the possession by entering upon and ousting the existing peaceable possession, he does not thereby acquire a rightful or a peaceable possession. The law does not protect him against the prior possessor. Neither does it indulge any presumption in his favor, nor permit him to gain any advantage by his own wrongful act.”

In Adams v. Tiernan, 5 Dana’s R. 394, the
same doctrine is held; it being there again an-
nounced that a peaceable possession wrong-
fully divested, ought to be restored, and is suf-
cient to maintain the action; and that no mere
outstanding superior right of entry in a
stranger, can be used availably as a shield by
the trespasser in such action. It has also been
repeatedly reaffirmed in later decisions of the
Supreme court of New York; and may there-
fore be regarded as the well settled law of that
state and of Kentucky.

To the same effect are the decisions in
New Jersey, Connecticut, Vermont and Ohio.
Penton’s lessee v. Sinnickson, 4 Halst. R.
149; Law v. Wilson, 2 Root’s R. 102; El-
lithorp v. Dewing, 1 Chipm. R. 141; Warner
v. Page, 4 Verm. R. 294; Ludlow’s heirs v.
McBride, 3 Ohio R. 240; Newnam’s lessee v.
The City of Cincinnati, 18 Ohio 323. In the
case of Ellithorp v. Dewing, 1 Chipm. R. 141,
the rule is thus stated:

“Actual seizin is sufficient to recover
as well as to defend against a stranger to
the title. He who is first seized may re-
cover or defend against any one except
him who has a paramount title. If dis-
seized by a stranger, he may maintain an
action of ejectment against the disseizor,
and in like manner the disseizor may
maintain an action against all persons ex-
cept his disseizee, or some one having a
paramount title.”

In Delaware, North Carolina, South Car-
olina, Indiana, and perhaps in other states of
the Union, the opposite doctrine has been
held.

In this state of the law, untrammeled as
we are by any decisions of our own courts, I
feel free to adopt that rule which seems to me
best calculated to attain the ends of justice.
The explanation of the law (as usually an-
nounced) given by Judge Marshall in the por-
tions of his opinion which I have cited, seems
to me to be founded on just and correct rea-
soning; and I am disposed to follow those de-
cisions which uphold a peaceable possession
for the protection as well of a plaintiff as of a
defendant in ejectment, rather than those
which invite disorderly scrambles for the
possession, and clothe a mere trespasser with
the means of maintaining his wrong, by
showing defects, however slight, in the title
of him on whose peaceable possession he has
intruded without shadow of authority or title.

The authorities in support of the mainte-
nance of ejectment upon the force of a mere
prior possession, however, hold it essential
that the prior possession must have been re-
moved by the entry or intrusion of the defend-
ant; and that the entry under which the de-
fendant holds the possession must have been
a trespass upon the prior possession. Sowden
v. McMillan’s heirs, 4 Dana’s R. 456. And it
is also said that constructive possession is not
sufficient to maintain trespass to real prop-
erty; that actual possession is required, and
hence that where the injury is done to an heir
or devisee by an abator, before he has en-
tered, he cannot maintain trespass until his re-
entry. 2 Tucker’s Comm. 191. An apparent
difficulty, therefore, in the way of a recovery
by the plaintiffs, arises from the absence of
positive proof of their possession at the time
of the defendant’s entry. It is to be observed,
however, that there is no proof to the con-
trary. Mrs. Lewis died in possession of the
premises, and there is no proof that they were
vacant at the time of the defendant’s entry.
And in Gilbert’s Tenures 37, (in note,) it is
stated, as the law, that as the heir has the right
to the hereditaments descending, the law pre-
sumes that he has the possession also. The
presumption may indeed, like all other pre-
sumptions, be rebutted: but if the possession
be not shown to be in another, the law con-
cludes it to be in the heir.

The presumption is but a fair and reason-
able one; and does, I think, arise here; and as
the only evidence tending to show that the de-
fendant sets up any pretense of right to the
land, is the certificate of the surveyor of Buckingham, of an entry by the defendant, for the same, in his office, in December 1844; and his possession of the land must, according to the evidence, have commenced at least as early as some time in the year 1842; it seems to me that he must be regarded as standing in the attitude of a mere intruder on the possession of the plaintiffs.

Whether we might not in this case presume the whole of the purchase money to be paid, and regard the plaintiffs as having a perfect equitable title to the premises, and in that view as entitled to recover by force of such title; or whether we might not resort to the still further presumption in their favor, of a conveyance of the legal title, are questions which I have not thought it necessary to consider; the view, which I have already taken of the case, being sufficient, in my opinion, to justify us in affirming the judgment.

ALLEN, MONCURE, and SAMUELS, Js., concurred in the opinion of Daniel, J.

LEE, J., dissented.

Judgment affirmed.
Helene and Latresia are the daughters of the late Claudette, who owned a home in Coral Gables. Latresia had resided with her mother in the home until Claudette’s death in June 2016. In 2000, Claudette had written a will leaving the house to Helene. In 2013, however, Claudette had executed a new will revoking the old one and leaving the house to Latresia. Helene claims that Claudette had been insane since 2009. (The significance of her claim is that a will is not valid if the testator was insane when she signed it; if a will is invalid, the previous valid will governs. That means that if Claudette was insane in 2013, her 2000 will -- which you may assume was valid at the time -- would govern.)

In answering the following questions, look to Tapscott for guidance, and be prepared to cite specific language from the opinion.

1. After Claudette dies in June 2016, Claudette’s brother Norbert sues to eject Latresia, asserting that the 2013 will giving Latresia title to the house is invalid because Claudette went insane in 2009. Who should win? Why?

2. Suppose instead that shortly after Claudette’s death in January 2016, Latresia leaves for two weeks for rest and recuperation in St. Kitts. Upon her return, she finds that her uncle Norbert has moved into the home, changed the locks, and refuses to leave. Latresia brings suit seeking to eject Norbert and he defends on the ground that Latresia lacks title. Who should win? Why? Is Tapscott exactly on point? Is it distinguishable? What if Latresia had left for a long time, boarded the place up, and sometime after that Norbert moved in?

3. Suppose instead that shortly after Claudette’s death in June 2016, Latresia leaves for two weeks for rest and recuperation in St. Kitts. Upon her return, Helene has moved into the home and refuses to leave. Latresia brings suit seeking to eject Helene and Helene defends on the ground that Latresia lacks title. Who should win? Why?

4. Suppose that Latresia wins the lawsuit mentioned in 3. Then Helene just throws Latresia out. Shortly thereafter, Helene goes on vacation, and uncle Norbert moves in, changes the locks, and refuses to leave when Helene returns. Helene sues to eject Norbert. Who should win? Why? How might Norbert try to distinguish Tapscott?
DOUGLASVILLE, Ga. - A woman came home from vacation to find a stranger living there, wearing her clothes, changing utilities into her name and even ripping out carpet and repainting a room she didn’t like, authorities said.

Douglas County authorities say they can’t explain why Beverly Valentine, 54, broke into an empty home and started acting like it was her own.

During the 2½ weeks the owner, Beverly Mitchell, was on vacation in Greece, Valentine allegedly redecorated the ranch home, ripping up carpet and taking down the owner’s pictures and replacing them with her own.

Mitchell was a complete unknown to Valentine, said Chief Sheriff’s Deputy Stan Copeland. He said he had no idea how Valentine knew Mitchell was gone.

“In 28 years, I’ve never seen something this strange,” Copeland said.

Valentine was being held in Douglas County Jail on a $25,000 bond, Copeland said. If convicted, she could face one to 20 years in prison. Copeland said Friday that he believed Valentine did not have a lawyer.

The case came to light when Mitchell, who lived alone, returned home Oct. 4 to find the lights on and a strange car parked in the driveway. Mitchell called police, who went in and found Valentine, who at first pretended she was renting the home.

Later, Copeland said, she admitted she broke into the house with a shovel and was squatting there. She was charged with burglary.

Authorities found a gun and $23,000 worth of Mitchell’s jewelry in Valentine’s car.

Valentine had the electricity switched over to her name and moved in a washer and dryer and her dog.
From the edge of the Thames River in New London, Conn., Michael Cristofaro surveyed the empty acres where his parents’ neighborhood had stood, before it became the crux of an epic battle over eminent domain.

“Look what they did,” Mr. Cristofaro said on Thursday. “They stole our home for economic development. It was all for [http://www.pfizer.com/home/](http://www.pfizer.com/home/) Pfizer, and now they get up and walk away.”

That sentiment has been echoing around New London since Monday, when Pfizer, the giant drug company, announced it would leave the city just eight years after its arrival led to a debate about urban redevelopment that rumbled through the United States Supreme Court, and reset the boundaries for governments to seize private land for commercial use.

Pfizer said it would pull 1,400 jobs out of New London within two years and move most of them a few miles away to a campus it owns in Groton, Conn., as a cost-cutting measure. It would leave behind the city’s biggest office complex and an adjacent swath of barren land that was cleared of dozens of homes to make room for a hotel, stores and condominiums that were never built.

The announcement stirred up resentment and bitterness among some local residents. They see Pfizer as a corporate carpetbagger that took public money, in the form of big tax breaks, and now wants to run.
“I’m not surprised that they’re gone,” said Susette Kelo, who moved to Groton from New London after the city took her home near Pfizer’s property. “They didn’t get what they wanted: their development, their big plan.”

Ms. Kelo lived in a small pink house in the Fort Trumbull section that was square in the sights of city and state officials who wanted to revitalize the area. The city had created the New London Development Corporation to buy up the nine-acre neighborhood and find a developer to replace it with an “urban village” that would draw shoppers and tourists to the area.

Economic development officials in Connecticut used that plan — and a package of financial incentives — to lure Pfizer to build a headquarters for its research division on 26 acres nearby. With an agreement that it would pay just one-fifth of its property taxes for the first 10 years, Pfizer spent $294 million on a 750,000-square-foot complex that opened in 2001.

By then, Ms. Kelo, the Cristofaros and several neighbors had sued the city to stop it from using its power of eminent domain to take their property. The lawsuit, Kelo v. New London, wound up at the Supreme Court in 2005 as one of the most scrutinized property-rights cases in years.

In a 5-to-4 decision, the high court ruled that it was permissible to take private property and turn it over to developers as part of a plan to bolster the local economy. Conservative justices, including Clarence Thomas, dissented. Justice Thomas called New London’s plan “a costly urban-renewal project whose stated purpose is a vague promise of new jobs and increased tax revenue, but which is also suspiciously agreeable to the Pfizer Corporation.”

The decision was widely criticized, and spurred lawmakers across the country to adopt statutes to prevent similar uses of eminent domain. Scott G. Bullock, senior attorney at the Institute for Justice, a libertarian group in Arlington, Va., said that 43 states had moved to protect private-property rights since the Kelo decision. New York and New Jersey are among the seven that have not, he said.
Mr. Bullock, who represented the landowners in New London, said Pfizer’s announcement “really shows the folly of these plans that use massive corporate welfare and abuse eminent domain for private development.”

“They oftentimes fail to live up to expectations,” he added.

For its part, Pfizer said it had no stake in the outcome of the Kelo case nor any interest in the development of the land that was acquired by eminent domain, according to a statement provided by a spokeswoman, Liz Power.

After Pfizer completed its $67 billion acquisition of Wyeth, another drug giant, in October, Ms. Power said, “We had a lot of real estate that we had to make strategic decisions about.” She said Pfizer would try to sell or lease its buildings in New London and would “continue to pay our taxes to the city as scheduled.”

The complex is currently assessed at $220 million, said Robert M. Pero, a city councilman who is scheduled to become mayor next month. The company pays tax on 20 percent of that value and the state pays an additional 40 percent, Mr. Pero said. That arrangement is scheduled to end in 2011, around the time Pfizer, which is currently the city’s biggest taxpayer, expects to complete its withdrawal.

“Basically, our economy lost a thousand jobs, but we still have a building,” Mr. Pero said. Then again, he added, “I don’t know who’s going to be looking for a building like that in this economy.”

Some residents said they expected Pfizer to seek a revaluation of its buildings if they wind up vacant in two years; Ms. Power declined to comment.

Mr. Pero said that he was offended that Pfizer did not notify city officials about the decision before Monday or give them a chance to argue against it or even fully understand it. But he said he did
not regret the decisions he and other elected officials had made to bring Pfizer to New London for what they had hoped would be a long and fruitful stay.

“I’m sure that there are people that are waiting out there to say, ‘I told you so,’ ” Mr. Pero said. “I don’t know that even today you can say, ‘I told you so.’ ”

But Mr. Cristofaro and Ms. Kelo both said just that.

Ms. Kelo, a nurse who works in New London and Norwich, Conn., said she was still bitter about the loss of her house, which she sold for $1 to Avner Gregory, a preservationist. Mr. Gregory dismantled the house and moved it across town. It now stands as a bright-pink symbol of the divisive dispute that drew so much attention to New London.

“In all honesty, I’m not happy about what happened to me,” Ms. Kelo said. But, she added, “With 43 states changing their laws, in that sense I feel we did some good for people across the country.”
New London — Fort Trumbull diehard Susette Kelo has sent out a heartfelt holiday greeting card to some 30 or so current and former members of the City Council and New London Development Corp., among others, wishing them, in essence, hell on Earth for the rest of their lives.

The text, accompanying a sparkling, snowy image of Kelo’s iconic pink house in the Fort Trumbull neighborhood, reads, in its entirety:

Here’s my house that you did take
From me to you, this spell I make.

Your houses, your homes,
Your family, your friends
May they live in misery
That never ends.

I curse you all,
May you rot in hell
To each of you
I send this spell.

For the rest of your lives,
I wish you ill
I send this now
By the power of will

Yours Truly,
Susette Kelo

The cards — conceived and produced by Kathleen Mitchell, a friend of Kelo and city gadfly, and bearing Kelo’s name — were received Tuesday by NLDC members David Goebel (the agency’s former executive director), George Milne and Reid Burdick, and by Alan Mayer and his wife, Gail Schwenker-Mayer, supporters of the Fort Trumbull development project and one-time assistants to Claire Gaudiani, former president of both the NLDC and Connecticut College. State Sen. Andrea Stillman, D-Waterford, also got one.

Kelo said this week that she mailed two cards to Gaudiani.

Kelo confirmed others on her list for the Christmas curse, including Mayor Peg Curtin and Beth Sabilia, Ernie Hewitt, Ron Nossek, Jane Glover, Kevin Cavanaugh, Rob Pero, Tim West, all current or former city councilors involved with Fort Trumbull. NLDC President Michael Joplin and members John Johnson, Carl Stoner, Steve Percy, Karl Sternlof, John Brooks and Pam Akins also are to receive the cards.

Kelo said she was considering sending the cards to the five U.S. Supreme Court justices who, in
2005, sided, as a majority, with the city and NLDC against the Fort Trumbull homeowners who fought the city’s right to take the properties by eminent domain.

Kelo, among six Fort Trumbull property owners who contested the city’s and agency’s right to seize their homes and businesses, was the lead plaintiff in the case. She ultimately accepted a settlement offer from the city totaling $442,155 for her house at 8 East St., more than $319,000 above the appraised value in 2000.

“It’s amazing anyone could be so vindictive when they’ve made so much money,” said Schwenker-Mayer on Tuesday, after receiving her card.

Milne, a former top executive at Pfizer Inc. here, called the card “immensely childish.”

“It’s sort of sad she elected to do this,” said Milne. “We were trying to do things for the city. It was nothing personal.”

Burdick said he put the card on his mantel with all his other Christmas greetings. “I think the poor woman has gone around the bend,” he said. “I haven’t gotten any mail from her in years. I still feel bad for Susette. The sorry part of this is that the things she’s angry about were not done to be mean-spirited toward her personally.”

To Glover, a former mayor, the card’s rendering of the Kelo house was cute. But the curse didn’t cut it. “Being a Christian, I don’t believe in curses,” she said. “It was really childish. I didn’t think Susette Kelo believed in curses and black magic. If she did, she would have tried it on the Supreme Court.”

Goebel, the former NLDC executive director, said, “Children will be children.” But Goebel was the only recipient, thus far, to suggest that the card might not be from Kelo.

“You shouldn’t take the signature at the bottom as that of the one who sent it,” Goebel said. “It’s not something Susette would have done, in my view. It’s unfortunate children have to do this.”

He did not speculate on who else might have been behind the mailing.

Kelo said the card was her idea. “I’m very upset with what these people did to me,” said Kelo, who works for the City of New London as a nurse dealing with lead paint and lead poisoning cases.

“This all could have been solved and ended many years ago,” she said. “They didn’t have to do what they did to us, and I will never forget. These people can think what they want of me. I will never, ever forget what they did.”
At times, the two-story white house with bright blue shutters and columns that seem to reach for the sky was mistaken for a church in Miami's Overtown neighborhood.

But for 80-year-old Benjamin Brown, the property that had been in his family since 1917 always meant just one thing: home.

Now it's empty, bought up by the Florida Department of Transportation to make room for an expansion of the highway that, for years, has rumbled with traffic a few feet from his backyard. One day soon, the shell of the house will crumble under the assault of heavy machinery, and the hard-earned legacy of Brown’s Bahamian immigrant mother will be erased forever.

“She would often say to us growing up, I’m going to leave this property to you, to the family,” Brown said. “And it’s the family’s responsibility to keep the property.”

Inside the house, faded outlines remain on the turquoise walls where vintage family photos and awards once hung. The navy blue carpeted living room where four generations gathered after hearty Sunday dinners is silent. The narrow backyard, previously the domain of the family’s four “crazy” dogs, is barren and still.

The state paid Brown and his wife $300,000 to move by April 28. He isn’t alone: FDOT bought or is acquiring 85 other properties nearby to make way for wider lanes on Interstate 395, which leads to the Adrienne Arsht Center for the Performing Arts, Pérez Art Museum Miami and downtown.

And though Brown purchased a four-bedroom home in Liberty City, it isn’t what he wanted.

“Why should I move? I’ve been here all my life. Why should I move? I’m happy here,” he said. “Everything I have is here, so, why should I move?”

The move didn’t seem real until Monday, his final day in the house. Stacks of carefully labeled cardboard boxes dominated each room. The walls were stripped bare. Only the grandfather clock that chimed every hour looked untouched, ready to be hand-carried out the door. Watching the movers, Brown, a usually unflappable retired elementary school teacher, placed his hand over his mouth in disbelief and mourning.

This is where he was born. This front yard is where he played marbles on the front steps and hide-and-go-switch — a rowdy version of hide-and-go-seek. And this is where he and his wife, Linda, raised five children and later hosted sleepovers for grandchildren.

“I didn’t want to leave,” Brown said, peering through his square-framed glasses as he took a last look around.

It’s a story that Overtown knows too well, the displacement of families for highways. It happened before, nearly 50 years ago, on a larger scale. In the 1960s, construction of Interstate 95 and its connector, I-395, displaced thousands of residents, leaving a once-thriving community blighted.

Today’s Overtown continues to struggle in the shadows of elevated expressways that loom overhead. But the overhaul of I-395 is being billed by state and local officials as one that will be beneficial to the neighborhood, a do-over to right the wrongs that fractured a community almost five decades earlier.

“You can leave it the way it is and the wrong will be there forever,” Miami Commissioner Marc Sarnoff said. “Or we can do what government can do … taking a fractured community and making it whole again.”

Construction isn’t set to begin until 2018. When it does, acres of Overtown land that now languish under the existing I-395 would be
freed for parks or development instead of re-
*remaining dark and littered spaces where the* 
*homeless often camp. And the Overtown* 
*nearhood, cut off from the burgeoning* 
downtown district, would be better connected 
to the urban street grid.

**FDOT spokesman Brian Rick said in an email** 
*that the new roadway will be higher than it is* 
now, “allowing light to penetrate underneath. 
The higher structure allows us to reconnect 
Northwest Second Avenue and improve local 
street connectivity in Overtown.”

Two designs are being considered to add archi-
*ptectural detail to the sleek elevated “signature* 
*bridge,” one a lotus shape, the other a wish-
*bone-inspired structure. The estimated cost for* 
*the 1.2-mile project is $600 million.

Of the 86 properties FDOT says it needs for the 
work, the majority are vacant lots. Officials say 
*they weigh numerous options before settling on* 
a plan with the least amount of impact on a 
*community.*

But with any major highway projects in an ur-
*ban area, there are human costs.

Sarnoff, who said he wasn’t aware of residents 
*being displaced, said the toll is inevitable.* 

“A few make sacrifices for the greater good, 
*but are they compensated, yes,” he said. “You* 
*are also doing your social part in being part of* 
*the greater good.”

On his last day in his house, Brown packed a 
*few remaining items forgotten under a bed* 
*frame: two pairs of brown shoes, dusty black* 
*boots, an electronic neck massager and blue* 
garden gloves.

He taped the box shut and walked into his liv-
*ing room, where he could see the FDOT-paid* 
movers hauling his life’s belongings onto a 
*truck.*

The ceiling-high bookshelf once overloaded 
*with family photos was cleared, the black-and-* 
*white portrait of his mother and father dis-
*patched to the truck along with a childhood* 
*photo of Brown and most of his 15 siblings and* 
*more than a dozen framed shots of his smiling* 
*children and grandchildren.

His treasured clock, purchased in 1974 in a 
downtown shop, chimed once more shortly be-
*fore movers gently lifted it onto their truck.*

Brown’s face creased into a frown. His grand-
dughter, Letricia Brown, who had stopped by 
to check on him, asked several times, “Are you 
*OK?”

He couldn’t put up much of a front. “This is 
terrible,” he said.

Brown lived through the previous highway 
*construction projects that sliced through the* 
*heart of his neighborhood and took with them a* 
*thriving commercial and arts district known as* 
*“Little Broadway.” Roughly half of the 40,000* 
*people who called the area home were dis-
*placed.*

Families relocated to areas like Liberty City 
*and Richmond Heights. Many of the area’s* 
businesses closed. Acclaimed theaters where 
*Lena Horne, Sam Cooke and Aretha Franklin* 
*headline shut down, most never to open again.

Brown remembers the bulldozers lining up 
*along Northwest Sixth Avenue to tear down his* 
*friends’ homes in the ’60s. The neighborhood* 
*kids nicknamed the bulldozers “big chief” for* 
*the picture of an Indian that was plastered on* 
*the side.*

“We used to make fun, ‘You don’t want big 
*chief coming to your house,’” Brown said.

Brown’s home survived “big chief” that time. 
The state only took a portion of his backyard as 
*right of way for I-395.*

“My mother was living at the time; she didn’t 
*want them to take any of her backyard. But* 
*there was nothing she could do about it, so they* 
took part of the backyard,” he said.

Critics of the project say Overtown, like other 
*inner city communities, historically ends up on* 
*the losing end of highway projects.*
“I understand there has to be economic development, but the black community had to give up its heart. The pain fell in Overtown before and it continues to fall in Overtown,” said Marvin Dunn, historian and author of *Black Miami in the Twentieth Century*.

Dunn said he is skeptical that the elevated bridge will have any significant positive effect on the community. The decades of damage from the previous highway projects can’t easily be erased, he said.

“Overtown will never be what it used to be,” he said. “The dream of the Overtown of the 1920s and ’30s — that dream is gone. It’s just a slow death of a very important community.”

Renters are also being displaced in this latest round. Among the properties seized by FDOT is a multi-unit apartment on Northwest 13th Street and First Place where Edythe Murphy, 57, has lived for seven years. She said she was drawn to Overtown’s history and the small-town feel of a community where her neighbors always said good morning.

“We don’t own the property, [but] none of us wanted to go. We were forced to,” she said.

Murphy said FDOT representatives were kind and provided financial incentives to herself and other tenants; she wouldn’t specify the amount.

“I know people talk bad about Overtown, but I stayed there for seven years and I liked where I was staying,” she said. “I would have liked to stay.”

Another multi-unit building — that one right next door to Brown’s house at Northwest 14 Terrace and Third Avenue — was pancaked by a demolition crew in April.

Brown watched the demolition crew hack through one side of the building, leaving half the structure and a flight of stairs intact. He saw the remainder of the building succumb to the machinery’s blows knowing that this was the plan for his place.

In the last days before he had to move out, Brown said he could hardly sleep. At night, he replayed scenes from his childhood. He wondered whether he could fight eminent domain, a law that says his property would serve a greater public benefit if it belonged to the state. Just as sleep would come, he would try to imagine living somewhere else.

But he couldn’t. “I would imagine when I get in my car, instead of going to the new house I’m driving here, coming here — because I’ve done it so many times.”
WEST WARWICK, R.I. — There is a striking, if scrappy, shrine here, where dozens of homemade crosses rise behind a corroded parking lot, set back from a thin state highway ridged with strip malls and myriad power lines.

This is where the Station nightclub used to stand — the site of a fire in 2003 that killed 100 people. For nearly 10 years, this stretch of grass has been a reliquary for these mementos. But the landowners retained ownership, preventing a formally constructed memorial from taking shape here, and leaving it up to families to mark and maintain this space on their own.

“My family’s been pretty much mowing and raking and keeping it up, trying to make it look good,” said Shawn Corbett, a plasterer whose brother Edward died in the fire. He and his parents have come here over the years to tend to the property. “It’s been frustrating trying to actually get the land and get the memorial built,” he said.

That is about to change. On Friday, the Station Fire Memorial Foundation announced that the owner, Raymond Villanova, had donated the land to the group — which is run mostly by survivors of the blaze — opening a new chapter after nearly 10 years of waiting. “It means the world,” Mr. Corbett said quietly.

“This is the last place where they had fun,” said Paula McLaughlin, whose younger brother, Michael Hoogasian, and his wife, Sandy, died on that February night. “People who have lost children need a place to go.”

The Hoogasians and more than 400 others had come to the 4,400-square-foot club to see the band Great White perform on the night of Feb. 20, 2003. Shortly after 11 o’clock, the band’s tour manager lit a pyrotechnic display, which ignited foam insulation near the back of the stage. The fire engulfed the building in just six minutes, sending a crush of people to the front entrance. Many of the 100 died from smoke inhalation, while more than 200 others were injured — trampled and burned. Among the dead was the band’s guitarist, Ty Longley.

The event, one of the worst American nightclub fires in memory, left a deep impression on this city, a working-class community of about 30,000, and it rippled across this tiny state.

“Everyone was affected, in one way or another,” said Linda Fischer, 43, whose face and hands are scarred by burns from that night.

Over the years, some victims’ family members and others have expressed frustration that more legal action was not taken. The band’s tour manager, Daniel Biechele, served less than two years in prison after pleading guilty to 100 counts of involuntary manslaughter.

The owners of the Station, the brothers Jeffery and Michael Derderian, pleaded no contest to the same charges; Michael Derderian served 27 months in prison, and his brother was sentenced to community service and probation. The fire marshal who failed to notice the flammable foam insulation during an inspection, Denis Larocque, was shielded by state law.

“The people who were in the club were the disenfranchised, on the whole,” said Dave Kane, whose 18-year-old son, Nicholas O’Neill, was killed in the fire. “It’s about a whole disregard for an entire section of our society who isn’t connected.”
Mr. Kane has been an outspoken critic of the proceedings in the aftermath of the fire, dismayed over the inability to give victims’ families control of the land so a permanent memorial could be built.

As an informal memorial took shape at the site, with families carving out space on the grass for tiny altars for their loved ones, the process stretched out, stymied by legal issues and perhaps also by divisions among the grieving relatives.

“We thought we were doing something good in the beginning, and then we realized people had their own agendas and we were divided,” said Claire Bruyere, whose daughter, Bonnie Hamelin, 27, died in the fire. “It just got ugly, and we were in so much pain.”

Meanwhile, the land just sat accumulating weeds and homemade tributes.

“It’s overgrown and yucky and moldy,” said Ms. McLaughlin, who lost her brother and sister-in-law. “I still can’t get over the bush that just grew there,” she added, indicating the vegetation that had sprung up near their crosses.

Ms. Bruyere said, “Just looking at everything is sad.”

Mr. Villanova, the owner of the land, has rarely spoken publicly about his decision to hold on to the plot. But about two weeks ago, things began to change.

As workers prepared to break ground for a different memorial for the fire victims, in neighboring Warwick — where 10 of those who died in the fire had lived — Gov. Lincoln Chafee and Gordon D. Fox, the speaker of the Rhode Island House, told the news media that they would look into whether they could use eminent domain to seize the land. That seemed promising to some survivors and family members, like Mr. Kane, who hoped it might spur the Villanova family to reconsider.

Others, however, thought that would be too aggressive. Gina Russo, the president of the Station Fire Memorial Foundation and a survivor whose fiancé died in the fire, called a local radio station to explain that. It turned out that Mr. Villanova was listening.

“I couldn’t do that to this man,” Ms. Russo said in an interview. “He didn’t do anything wrong.” Like many survivors and victim’s relatives, she was simply grateful that the land had not been fenced off or sold. “We, the board, wanted to welcome the Villanova family, we wanted to have them embrace us and trust us and do the right thing by the land,” she said.

Mr. Villanova requested a meeting with Ms. Russo and some of the other foundation members. Last week, he signed the land over to the foundation.

“The deed is officially ours, and it’s in my hand,” Ms. Russo said Friday, standing at the site of the fire. “It will be, for me, the final phase of this tragedy, of making something beautiful out of something so ugly.”

In the next few weeks, foundation members expect to meet with designers and begin raising money for the project. Their goal is $5 million, so they can establish a trust fund for the memorial’s maintenance.

And the group hopes to enshrine the relics of the last 10 years at the new memorial, burying them in a time capsule, said Victoria Eagan, another survivor of the fire. “Even the 9½-year-old moldy teddy bears have a place,” she said. “They meant something to someone when they left it here.”
§ 95.12. Real property actions

No action to recover real property or its possession shall be maintained unless the person seeking recovery or the person’s ancestor, predecessor, or grantor was seized or possessed of the property within 7 years before the commencement of the action.

§ 95.13. Real property actions; possession by legal owner presumed

In every action to recover real property or its possession, the person establishing legal title to the property shall be presumed to have been possessed of it within the time prescribed by law. The occupation of the property by any other person shall be in subordination to the legal title unless the property was possessed adversely to the legal title for 7 years before the commencement of the action.

§ 95.14. Real property actions; limitation upon action founded upon title

No cause of action or defense to an action founded on the title to real property, or to rents or service from it, shall be maintained unless:

(1) The person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of the person, was seized or possessed of the real property within 7 years before commencement of the action; or

(2) Title to the real property was derived from the United States or the state within 7 years before commencement of the action. The time under this subsection shall not begin to run until the conveyance of the title from the state or the United States.

§ 95.16. Real property actions; adverse possession under color of title

(1) When the occupant, or those under whom the occupant claims, entered into possession of real property under a claim of title exclusive of any other right, founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment, and has for 7 years been in continued possession of the property included in the instrument, decree, or judgment, the property is held adversely. If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Adverse possession commencing after December 31, 1945, shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All land protected by the enclosure must be included within the description of the property in the written instrument, judgment, or decree. If only a portion of the land protected by the enclosure is included within the description of the property in the written instrument, judgment, or decree, only that portion is deemed possessed.

(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been
cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

§ 95.18. Real property actions; adverse possession without color of title

(1) When the possessor has been in actual continued possession of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, or when those under whom the possessor claims meet these criteria, the property actually possessed is held adversely if the person claiming adverse possession:

(a) Paid, subject to s. 197.3335, all outstanding taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality within 1 year after entering into possession;

(b) Made a return, as required under subsection (3), of the property by proper legal description to the property appraiser of the county where it is located within 30 days after complying with paragraph (a); and

(c) Has subsequently paid, subject to s. 197.3335, all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality for all remaining years necessary to establish a claim of adverse possession.

(2) For the purpose of this section, property is deemed to be possessed if the property has been:

(a) Protected by substantial enclosure; or

(b) Cultivated, maintained, or improved in a usual manner.

(3) A person claiming adverse possession under this section must make a return of the property by providing to the property appraiser a uniform return on a form provided by the Department of Revenue. The return must include all of the following:

(a) The name and address of the person claiming adverse possession.

(b) The date that the person claiming adverse possession entered into possession of the property.

(c) A full and complete legal description of the property that is subject to the adverse possession claim.

(d) A notarized attestation clause that states:

UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT ARE TRUE AND CORRECT. I FURTHER ACKNOWLEDGE THAT THE RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY.

(e) A description of the use of the property by the person claiming adverse possession.

(f) A receipt to be completed by the property appraiser.

(g) Dates of payment by the possessor of all outstanding taxes and matured installments of special improvement liens levied against the property by the state, county, or municipality under paragraph (1)(a).

(h) The following notice provision at the top of the first page, printed in at least 12-point uppercase and boldfaced type:

THIS RETURN DOES NOT CREATE ANY INTEREST ENFORCEABLE BY LAW IN THE DESCRIBED PROPERTY.

The property appraiser shall refuse to accept a return if it does not comply with this subsection. The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4) for the purpose of implementing this subsection. The emergency rules shall remain in effect.
for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

(4) Upon the submission of a return, the property appraiser shall:

(a) Send, via regular mail, a copy of the return to the owner of record of the property that is subject to the adverse possession claim, as identified by the property appraiser’s records.

(b) Inform the owner of record that, under s. 197.3335, any tax payment made by the owner of record before April 1 following the year in which the tax is assessed will have priority over any tax payment made by an adverse possessor.

(c) Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted.

(d) Maintain the return in the property appraiser’s records.

(5)(a) If a person makes a claim of adverse possession under this section against a portion of a parcel of property identified by a unique parcel identification number in the property appraiser’s records:

1. The person claiming adverse possession shall include in the return submitted under subsection (3) a full and complete legal description of the property sufficient to enable the property appraiser to identify the portion of the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept the return if the portion of the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the portion of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall follow the procedures under subsection (4), and may not create a unique parcel identification number for the portion of property subject to the claim.

(c) The property appraiser shall assign a fair and just value to the portion of the property, as provided in s. 193.011, and provide this value to the tax collector to facilitate tax payment under s. 197.3335(3).

(6)(a) If a person makes a claim of adverse possession under this section against property to which the property appraiser has not assigned a parcel identification number:

1. The person claiming adverse possession must include in the return submitted under subsection (3) a full and complete legal description of the property which is sufficient to enable the property appraiser to identify the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept a return if the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall:

1. Assign a parcel identification number to the property and assign a fair and just value to the property as provided in s. 193.011;

2. Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted; and

3. Maintain the return in the property appraiser’s records.

(7) A property appraiser must remove the notation to the legal description on the tax roll that an adverse possession claim has been submitted and shall remove the return from
the property appraiser’s records if:

(a) The person claiming adverse possession notifies the property appraiser in writing that the adverse possession claim is withdrawn;

(b) The owner of record provides a certified copy of a court order, entered after the date the return was submitted to the property appraiser, establishing title in the owner of record;

(c) The property appraiser receives a certified copy of a recorded deed, filed after the date of the submission of the return, from the person claiming adverse possession to the owner of record transferring title of property along with a legal description describing the same property subject to the adverse possession claim; or

(d) The owner of record or the tax collector provides to the property appraiser a receipt demonstrating that the owner of record has paid the annual tax assessment for the property subject to the adverse possession claim.

(8) The property appraiser shall include a clear and obvious notation in the legal description of the parcel information of any public searchable property database maintained by the property appraiser that an adverse possession return has been submitted to the property appraiser for a particular parcel.

(9) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section prior to making a return as required under subsection (3), commits trespass under s. 810.08.

(10) A person who occupies or attempts to occupy a residential structure solely by claim of adverse possession under this section and offers the property for lease to another commits theft under s. 812.014.

§ 95.191. Limitations when tax deed holder in possession

When the holder of a tax deed goes into actual possession of the real property described in the tax deed, no action to recover possession of the property shall be maintained by a former owner or other adverse claimant unless the action commenced is begun within 4 years after the holder of the tax deed has gone into actual possession. When the real property is adversely possessed by any person, no action shall be brought by the tax deed holder unless the action is begun within 4 years from the date of the deed.

§ 95.192. Limitation upon acting against tax deeds

(1) When a tax deed has been issued to any person under s. 197.552 for 4 years, no action shall be brought by the former owner of the property or any claimant under the former owner.

(2) When a tax deed is issued conveying or attempting to convey real property before a patent has been issued thereon by the United States, or before a conveyance by the state, and thereafter a patent by the United States or a conveyance by the state is issued to the person to whom the property was assessed or a claimant under him or her, and the tax deed grantee or a claimant under the tax deed grantee has paid the taxes for 4 successive years at any time after the issuance of the patent or conveyance, the patentee, or grantee, and any claimant under the patentee or grantee shall be presumed to have abandoned the property and any right, title, and interest in it. Upon such abandonment, the tax deed grantee and any claimant under the tax deed grantee is the legal owner of the property described by the tax deed.

(3) This statute applies whether the tax deed grantee or any claimant under the tax deed grantee has been in actual possession of the property described in the tax deed or not. If a tax deed has been issued to property in the actual possession of the legal owner and the legal owner or any claimant under him or her
continues in actual possession 1 year after issuance of the tax deed and before an action to eject him or her is begun, subsections (1) and (2) shall not apply.

§ 95.21. Adverse possession against lands purchased at sales made by executors

The title of any purchaser, or the purchaser’s assigns, who has held possession for 3 years of any real or personal property purchased at a sale made by an executor, administrator, or guardian shall not be questioned because of any irregularity in the conveyance or any insufficiency or irregularity in the court proceedings authorizing the sale, whether jurisdictional or not, nor shall it be questioned because the sale is made without court approval or confirmation or under a will or codicil. The title shall not be questioned at any time by anyone who has received the money to which he or she was entitled from the sale. This section shall not bar an action for fraud or an action against the executor, administrator, or guardian for personal liability to any heir, distributee, or ward.

§ 95.22. Limitation upon claims by remaining heirs, when deed made by one or more

(1) When any person owning real property or any interest in it dies and a conveyance is made by one or more of the person’s heirs or devisees, purporting to convey, either singly or in the aggregate, the entire interest of the decedent in the property or any part of it, then no person shall claim or recover the property conveyed after 7 years from the date of recording the conveyance in the county where the property is located.

(2) This section shall not apply to persons whose names appear of record as devisees under the will or as the heirs in proceedings brought to determine their identity in the office of the judge administering the estate of decedent.

§ 95.231. Limitations where deed or will on record

(1) Five years after the recording of an instrument required to be executed in accordance with s. 689.01; 5 years after the recording of a power of attorney accompanying and used for an instrument required to be executed in accordance with s. 689.01; or 5 years after the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey, affect, or devise it, the instrument, power of attorney, or will shall be held to have its purported effect to convey, affect, or devise, the title to the real property of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The instrument is admissible in evidence. A power of attorney validated under this subsection shall be valid only for the purpose of effectuating the instrument with which it was recorded.

(2) After 20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.

(3) This law is cumulative to all laws on the subject matter.
Return of Real Property in Attempt to Establish Adverse Possession without Color of Title

<table>
<thead>
<tr>
<th>Name of claimant(s)</th>
<th>Mailing address</th>
<th>Phone</th>
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Parcel ID, if available
☐ the property claimed is only a portion of this parcel ID

Date of filing | Date claimant entered into possession of property

Legal description of property claimed
Fields will expand online, or you may add pages. Must be full and complete. If the property appraiser cannot identify the property from the legal description, you may be required to obtain a survey.

This property has been: ☐ protected by substantial enclosure ☐ cultivated, maintained, or improved in a usual manner

Describe your use of the property, in detail below.

Dates of payments of any outstanding taxes or liens levied by the state, county or municipality:

Under penalty of perjury, I declare that I have read the foregoing return and that the facts stated in it are true and correct. I further acknowledge that the return does not create any interest enforceable by law in the described property.

Signature of claimant(s)

State of Florida
County of

This instrument was sworn to and subscribed before me on by , personally known to me or who produced as identification.

Signature and seal, notary public

COMPLETED BY PROPERTY APPRAISER

Received in the office of the property appraiser of County, Florida on . A signed copy of this return has been delivered to the claimant(s). A copy will be sent to the owner of record.

Signature, property appraiser or deputy | Date

TO THE OWNER OF RECORD

A tax payment made by the owner of record before Apr 1 the year after the taxes were assessed will have priority over a payment made by the claimant. An adverse possession claim will be removed if the owner of record or tax collector furnishes a receipt to the property appraiser showing payment of taxes by the owner of record during the period of the claim. (36.18, F.S.)

This return is a public record and may be inspected by any person under s. 119.01, F.S.
Note on the Florida Adverse Possession Statute

Statutes are often ambiguous and poorly drafted, and therefore difficult to apply. The purpose of this note is to give you some sense of how one would parse the Florida adverse possession statute, so that you can get an idea of the difficulties one encounters in attempting to interpret a statute. A full exposition of the statute would require a lengthy treatment; this note touches only on some of the basic points.

I. Relation to Common Law Elements of Adverse Possession

The Florida statute must be read against the background of the elements of adverse possession under the common law. To establish adverse possession, the plaintiff must show possession that was (a) actual and exclusive, (b) continuous and uninterrupted, (c) open and notorious, and (d) hostile (i.e., without permission), for the prescriptive period. In most jurisdictions, state of mind is not relevant — i.e., it doesn’t matter whether the adverse possessor thought the land was really his, or, on the contrary, knew the land wasn’t his and intended to take it.

Some of these elements are embodied in fairly explicit language in the Florida statute. See ch. 95.16 and 95.18:

(a) possession: “When the occupant . . . entered into possession of real property . . .” ch. 95.16(1), 95.18(1); see also id. ch. 95.16(2), 95.18(2) (defining possession).

(b) continuous and uninterrupted: “has for 7 years been in continued possession of the property . . .”

(c) hostile and exclusive: “under a claim of title exclusive of any other right.” That is, the occupant did not enter the land with the permission of the owner (as in the case of a tenancy), but claiming it as his own.

As you can see, the words “open and notorious” do not appear in the statute. But a court would likely refuse to find that activities that were not “open and notorious” could constitute “possession” under the statute.

The statute reflects another element of the common law requirements for adverse possession: a distinction between cases in which the claimant enters the land under a deed (“founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment,” ch. 95.16(1)) and cases in which there is no deed, ch. 95.18. In color of title cases, the statute tells you the extent of the property the claimant will be awarded if adverse possession is established. See, e.g., ch. 95.16(1) (“If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.”); ch. 95.16(2)(b). In addition, the statute adds a requirement that is not part of the common law. Where the claim is under color of title, the deed must have been recorded; where the claim is not under color of title, the adverse possessor must have paid the taxes on the land. What might be the purpose of these requirements?

In interpreting a statute, you should also be aware of what is not included in it. Under the common law, the running of the statute of limitations will be tolled for a title holder who is under a disability of some sort. (See p. 102 of your casebook for details.) There is no such provision in the Florida statute, though. In fact, Florida repealed its disabilities provision in 1974. (In that respect, it is very much in the minority of states, perhaps the only one to have done so.)

4 More on this question below.
What is the purpose of the other sections? Section 95.12 sets the basic limitations period. In effect, it tells us that an action “to recover real property or its possession” must be brought within 7 years of the time the adverse possessor entered. That is, if the adverse possessor entered the land and took exclusive possession of it 10 years ago, the owner would not be able to show that she was “seized or possessed of the property within 7 years before the commencement of the action.”\(^5\) What else does it say? Suppose A lives on Blackacre, and B wrongfully throws her out in year 1. In year 3, A conveys all her “right, title and interest” to C. In year 6, C sues B for possession of Blackacre. B, who has been living on the property in the meantime, interposes the defense that C has never been in possession of the land, and certainly not “within 7 years before the commencement of the action.” Can you see why that defense would fail?

Section 95.13 helps the one who holds the title by establishing a presumption that the title holder is in possession of the property and that anyone else occupying the land does so with the title holder’s permission (except where adverse possession has been shown).

Section 95.14 applies the same statute of limitations to claims founded on a title. Suppose A holds title to Blackacre. In year 1, B enters the land and claims it as his own. A decides in year 10 that she wants Blackacre back. Fearing that it’s too late now to bring an action for recovery of real property or its possession (she cannot show under Section 95.12 that she was possessed of Blackacre within the past 7 years), she instead brings an action to quiet title, \(i.e.,\) to establish that she and no one else holds the title to Blackacre. Under Section 95.14, her action would still be barred.

II. Particular Issues

Even with a general sense of what the statute means, you will always encounter ambiguities when you try to apply it to particular facts.

1. Suppose A, wishing to claim some land by adverse possession, but without having to pay taxes, has a friend execute a “deed” to the land. A knows that the deed is false because his friend does not own the land. A then records the deed. Can A later claim adverse possession under color of title? Nothing in the statute explicitly requires a good faith belief in the validity of the deed. Moreover, by recording the deed, A could argue that he complied with the statutory requirement, and gave public notice to the true title holder. On the other hand, could you argue that A’s claim to the property could not have been “founded” (ch. 95.16(1)) on a deed he knew to be false? Even apart from that, might the courts impose a requirement that a deed in such a case be believed in good faith to give title?

2. Suppose one enters under a deed to a 100 acre tract and clears and cultivates the northwest quarter of the tract. If all the elements of adverse possession are established, does the adverse possessor get the entire 100 acre tract? What if there is a fence around the entire tract? See ch. 95.16(2)(b). What if there is no fence, but the custom is to clear only a part of a farm tract and the adverse possessor has followed that custom? See ch. 95.16(2)(d).

Suppose none of those sections apply; the adverse possessor would get only the quarter he “usually cultivated or improved.” Satisfaction of the adverse possession set out

\[5\] Don’t worry for now about what it means to be “seized” of property.
in the section for claims made without color of title would have given him the same property, would it not? See ch. (2)(b). [Note: why do you think 95.16(2)(a) says “when it has been usually cultivated or improved,” whereas 96.18(2)(b) says “Cultivated, maintained, or improved in a usual manner”? There is no good reason. The legislature modified 95.18 in 2013 for other reasons and apparently decided to modernize the language (“in a usual manner” for “usually”) and expound it on a little, but made no parallel change to 95.16.] So what difference might it make whether or not there is a deed?

3. How does the statute apply to border disputes? Consider the following hypothetical. A and B live next to each other. Both have title to their respective properties. Relying on an inaccurate survey, A puts a fence around his lot and encloses a strip of land that really belongs to B. Over the next 10 years, A treats it as his own and satisfies all the common law elements of adverse possession. A pays taxes only on the land described in his deed. B, sleeping on her rights, does nothing about the fence. In year 10, A discovers the survey was wrong and brings an action to quiet title, claiming the disputed strip.

Is this an action for adverse possession under color of title? A clearly has title to his own property and thought that the strip was part of it. On the other hand, it is equally clear that the property description in A’s title does not include the disputed strip. Perhaps actions under “color of title” include only actions for land that is actually described in the title. Indeed, one might argue that that conclusion follows directly from the title recording requirement in Section 95.16(1). After all, A’s recorded title gave B no notice whatsoever that A was claiming a portion of her land.

But if that is the correct interpretation, why is Section 95.16(2)(b) needed at all? That is, if adverse possession under color of title creates rights only in the land described in the title, why was there any need for the legislature to provide that where A fences some land, only the portion of the land actually described in the title is deemed to be possessed under color of title? It seems redundant. Suppose further that A did not fence the land, but did “usually cultivate or improve” (ch. 95.16(2)(a)) the disputed strip. Consider the fact that there is no similar qualification in subsection (2)(a) — i.e., there is no provision in (2)(a) stating that “If only a portion of the land usually cultivated or improved is included within the description of the property in the written instrument, only that portion is deemed possessed.” Did the legislature intend to draw a distinction between the two types of cases? Would there be any reason for doing so?
Finally, consider the practical impact of this section. If A cannot claim the strip by adverse possession under color of title, he must instead show adverse possession without color of title. Yet A did not pay taxes on the strip, and in general it is unlikely that anyone in A’s position would do so. Did the legislature mean in effect to eliminate adverse possession in border dispute cases? Perhaps the legislature intended to provide that no claim of adverse possession would ever succeed unless there is some kind of written public record — a recorded title, or a tax record — giving notice to the owner that the particular piece of property is being claimed adversely. The legislature might have been attempting to be particularly solicitous toward title holders. On the other hand, is there any indication that the legislature intended to undertake such a marked departure from the common law? If there is no legislative history — no records of hearings in the state legislature, committee reports, or floor debates — what sorts of factors would you expect to influence the court?

4. If you have difficulty applying the statute to disputed boundary strips, you’re in good company. In construing a statute — particularly state statutes, where there often is no legislative history — you may need to look to the history of the statute and the courts’ attempts to construe it:

a. Adverse Possession Statute in 1973:

“For the purpose of constituting an adverse possession [under color of title] . . . land shall be deemed to have been possessed and occupied . . .

“(2) Where it has been protected by a substantial enclosure. All contiguous land protected by such substantial enclosure shall be deemed to be premises included within the [title] within the purview of Sec. 95.16.”


The Florida Supreme Court had occasion to construe this provision in Meyer v. Law, 287 So. 2d 37 (1973), under facts like those described in the A-B border dispute hypothetical set out at the beginning of Note 3 above. Four of the seven justices rejected A’s claim: “persons who claim land adversely under a paper title relating to a certain area, and who fence in or cultivate an area beyond that which is described in the paper title, but who do not pay any taxes on the additional area, can secure good title by adverse possession only to the portion of land described by the deed, decree, or other written instrument of record.” 287 So. 2d at 40. In general, the majority held, no claim of adverse possession can ever succeed unless either (a) there is public notice by way of recording the title [color of title], or (b) there is public notice by way of tax records [without color of title].

In effect, this made it impossible for anyone to gain adverse possession of a strip of land along a border, beyond the land described in their title, except in the unlikely instance that a person in A’s position paid taxes on a strip of land belonging to their neighbor. This result suited the majority, which indicated a strong belief that the doctrine of adverse possession is “an ancient and, perhaps, somewhat outdated one.” Id. at 41.

Taking the opposite position, 3 of the 7 justices argued that the language of Section 95.17(2) indicated that the legislature enacted that section to enlarge the scope of adverse possession under color of title and permit people in situations like A’s to take adverse

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6 Fla. Stat. ch. 95.17(2) was the predecessor to the current Fla. Stat. ch. 95.16(2)(b). Then-
possession of a strip of land contiguous to the tract described in their own deed where they enclose that strip and treat it as their own. According to the dissent, the legislature enacted the statutory language quoted above in order to overturn earlier decisions following a rule like that set out by the majority in Meyer. Thus, according to the dissent, the majority effectively held the opposite of what the legislature intended.

b. 1974 Amendment to Adverse Possession Statute

Immediately after Meyer, the legislature amended ch. 95.17(2) (renumbered 95.16(2)(b)) to read:

“For the purpose of this section [i.e., for the purpose of constituting an adverse possession under color of title] property is deemed possessed . . . “

“(2) When it has been protected by a substantial enclosure. All contiguous land protected by the enclosure shall be property included within the written instrument, judgment, or decree, within the purview of this section.” Fla. Stat. 95.16(2)(b)(1975).

In Seddon v. Harpster, 403 So. 2d 409 (Fla. 1981), the Supreme Court stated that the new language “clearly states that one does not have to have paper title correctly describing the disputed property as long as that area is contiguous to the described land and `protected by a substantial enclosure.’” 403 So. 2d at 411 (emphasis in original). This meant that A would be allowed to claim the disputed strip under color of title, even though the strip was not within the property described in his title. See also, e.g., Elizabethan Development, Inc. v. Magwood, 479 So. 2d 251 (Fla. 2d DCA 1985).

The dissent argued, in contrast, that “[t]here is nothing in the changes to indicate that the legislature intended to overrule the holding of Meyer,” and concluded that the new statute made changes of style rather than substance. 403 So. 2d at 412. Under the new language of the statute, the dissent argued, A should not recover, just as he would not recover under the prior statute construed in Meyer.

c. 1987 Amendment to Ch. 95.16(2)(b)

In 1987, the legislature amended the statute to read:

“For the purpose of this section [i.e., for the purpose of constituting an adverse possession under color of title] property is deemed possessed . . . “

“(b) When it has been protected by a substantial enclosure. All land protected by the enclosure must be included within the description of the property in the written instrument . . . . If only a portion of the land protected by the enclosure is included within the description of the property in the written instrument . . . only that portion is deemed possessed.” Fla. Stat. ch. 95.16(2)(b)(1987).


The Supreme Court revisited the issue most recently in Seton v. Swann. Read the case and consider:

i. Does the Court’s holding in Seton rest on section 95.16(2)(b)?

ii. Consider the following hypothetical: A has a house next to a vacant lot. B obtains a deed to the vacant lot; the deed, for reasons that need not concern us, is invalid. B records the deed to the vacant lot. After building a
house on the lot, B puts a fence up, but mistakenly places it inward of the boundary between lots A and B. A mows the lawn on the strip and plants some shrubs there. Ten years later, B discovers the error in the location of the fence. She now seeks to eject A from the strip that A has been occupying, and to move the fence out to reflect the boundary line in the deeds. Can you see why B would lose? Does that mean that A would win? Who else might have a claim?

iii. Note that in *Seton*, it was Ms. Swann herself who put up a fence in a location she knew to be incorrect. It is as if, in the illustration above (at Supp. 42), the fence had been put in by B, not A. Nevertheless, she prevailed. Do you agree or disagree with that result as a matter of policy? Why?

***

As noted earlier (Supp. 42), the Florida legislature modified 95.18 in 2013, adding subsection (3). What might be inferred from this addition about the legislature’s attitude towards adverse possession?
We review Swann v. Seton, 629 So. 2d 935 (Fla. 5th DCA 1993), because of conflict with Seddon v. Harpster, 403 So. 2d 409 (Fla. 1981), and Turner v. Valentine, 570 So. 2d 1327 (Fla. 2d DCA 1990), review denied, 576 So. 2d 294 (Fla. 1991). We have jurisdiction based on article V, section 3(b)(3) of the Florida Constitution.

This case concerns the interpretation of section 95.16, Florida Statutes (1991). We approve the district court’s opinion because we find that the Setons did not establish adverse possession by color of title under this statute. Under section 95.16, the title to property possessed but not described in a recorded instrument cannot be used to show color of title.

In 1964, Eula Swann and her late husband acquired Lot 25 in a platted subdivision in Kissimmee. In 1982, William and G. Jewel Seton acquired the adjoining Lot 24 which was described in their deed as: “Lot 24, Block A, CANTERBURY TERRACE, according to the plat thereof, as recorded in plat book 1, page 305, of the public records of Osceola County, Florida.” Surveys conducted in 1959, 1972, 1976, and 1984 erroneously showed the location of the boundary line between the lots.

The Setons made improvements in 1984 in reliance on the most recent erroneous survey. Swann protested about improvements on a strip of land that she says is hers. Sometime after the Setons purchased their lot, Swann built a fence along the boundary line shown in the erroneous surveys. She testified in the trial court that she knew her fence was built inward of her property line.

A boundary problem arose again in 1992 when erosion caused Swann’s seawall to collapse. The district court said the boundary issue presumably came up because Swann wanted the new seawall to run at the correct boundary line. Swann, 629 So. 2d at 936. A survey conducted in 1992 showed that the earlier surveys were incorrect. The parties stipulated that the 1992 survey, and a 1951 survey that was rediscovered, were “accurate and conformed to the subdivision plat.” Id. The subdivision plat clearly reflects that the disputed property is part of Lot 25—Swann’s property.

Swann sued the Setons in ejectment in 1992, seeking a court order compelling the Setons to remove all the permanent improvements they had made to the disputed strip of land. The trial court ruled for the Setons, finding that they had adversely possessed the disputed land for the seven-year period required by section 95.16.

The district court reversed. The court found that a party must meet two requirements to acquire title through adverse possession by color of title under section 95.16: First, the property must be described in a written instrument recorded in official county records, and, second, the property must be possessed continuously for seven years. Subsection (2) then describes different ways in which property can be deemed possessed.

7 Section 95.16(1), Florida Statutes (1991), says in relevant part that:

Adverse possession commencing after December 31, 1945 shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.
did not meet the first requirement, the court found no need to decide whether the Setons had possession. Id. at 937.

In reaching its conclusion, the district court reviewed the history of section 95.16. In Meyer v. Law, 287 So. 2d 37 (Fla. 1973), this Court considered adverse possession under section 95.17(2), Florida Statutes (1971), which says that land shall be deemed possessed

[W]here it has been protected by a substantial enclosure. All contiguous land protected by such substantial enclosure shall be deemed to be premises included in the written instrument, judgment, or decree within the purview of section 95.16 . . . .

The Court read section 95.17 in pari materia with three other adverse possession statutes and held:

Where one has color of title to a larger area than is fenced or cultivated, and he pays no taxes on any of the land described in the title, he may acquire title by adverse possession only to that portion of land shown on the paper title which he actually fences or cultivates.

Meyer, 287 So. 2d at 40. Thus, the Court held that color of title was limited to property shown in the public record. Id.

In 1974, after Meyer, the Legislature amended adverse possession statutes by combining and rewording sections 95.16 and 95.17. The amendment took effect on January 1, 1975. In Seddon this Court, answering a certified question, held that the statute could not be applied retroactively. 403 So. 2d at 411. The Court also said that:

By combining sections [95.16 and 95.17] the new statute clearly states that one does not have to have paper title describing the disputed property as long as that area is contiguous to the described land and “protected by a substantial enclosure.”

Id. (emphasis added). This represented a departure from Meyer, where this Court had held that color of title was limited to property shown in the record. While Swann characterizes this interpretation as dicta, it was subsequently cited as controlling law by at least one district court. See Elizabethan Dev., Inc. v. Magwood, 479 So. 2d 251 (Fla. 2d DCA 1985); Revels v. Sico, Inc., 468 So. 2d 481 (Fla. 2d DCA 1985). The Setons argue that Seddon controls their case. But as the district court pointed out, the statute analyzed in Seddon was subsequently amended. See ch. 87-194, § 1, at 1255, Laws of Fla. The amended statute, which applies to the Swann-Seton dispute, says:

If only a portion of the land protected by the enclosure is included within the description of the property in the written instrument, judgment, or decree, only that portion is deemed possessed.

§ 95.16(2)(b), Fla. Stat. (1991). The district court correctly determined that the 1987 amendment indicated a legislative intent to supersede the Seddon holding that enclosed lands contiguous to land described in the written instrument could be acquired by adverse possession without payment of taxes on the lands. See Swann, 629 So. 2d at 937-38. We agree with the district court that the 1987 amendment embodies the result of the predecessor statutes analyzed in Meyer.

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8 This statute was a predecessor to section 95.16(2), Florida Statutes (1991), which is at issue in the instant case.

9 We note, parenthetically, that the Setons did not “enclose” the disputed property. Rather, the Setons asserted possession by “ordinary use.” See § 95.16(2)(c), Fla. Stat. (1991).
We approve the district court’s decision in Swann and hold that section 95.16(1) requires, as a first step, that the instrument upon which the claim of title is founded must be recorded in the official county records and describe the disputed property. Only then can a court consider under section 95.16(2) whether a party adversely possessed certain property. Because the Setons’ title does not describe any of Swann’s property, the Setons cannot meet the first requirement and cannot claim adverse possession by color of title.

Accordingly, while Seddon might have dictated a contrary result in this case, Seddon is no longer applicable because of the Legislature’s 1987 amendment. We also disapprove Turner and Bailey v. Hagler, 575 So. 2d 679 (Fla. 1st DCA 1991), review denied, 587 So. 2d 1327 (Fla. 1991), because they were decided on the basis of Seddon, but after the Legislature’s 1987 amendment to section 95.16. Seddon was no longer valid when Turner and Bailey were decided.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, WELLS and ANSTEAD, JJ., concur.
A dream beach house in Florida has turned into a nightmare for a Missouri couple.

Six months after the custom house was built along the Atlantic Ocean near Palm Coast, Mark and Brenda Voss learned it's on the wrong lot in the gated Ocean Hammock community.

Mark Voss tells the Daytona Beach News Journal they're in “total disbelief.” The couple own 18 other residential lots in the community. They bought the lot in 2012 and hired Keystone Homes to build a three-story, 5,000-square-foot vacation rental for $680,000.

“We may have moved (to Ocean Hammock) someday. But, with this headache and grief, we're not so sure. The Midwest is looking pretty good right now,” he told the paper.

Keystone vice president Robbie Richmond says the company is trying to negotiate a settlement.

“The buck stops with the builder. We know that. We are in the process of trying to schedule a conference call and find a fair resolution without the lawyers,” Richmond told the paper.

The couple hired a lawyer.

Keystone and Voss say the error can be traced to a 2013 survey. The mistake was uncovered in September after the house had been rented frequently.

The house comes with five bedrooms, a game room and a screened-in pool, the report said.

The Associated Press contributed to this report.
For the last six months, Robert Ramos, his wife Ana Alvarez, and her grown son, Jonathan, and a menacing American Bulldog have been living in a million-dollar house in a swanky section of Coral Gables without paying a cent in rent.

The city says they’re squatters. The couple say they were duped by a shady landlord. Since September, the confusion has created a stalemate.

On Tuesday, Coral Gables commissioners made a move to resolve what can be a complicated situation arising from the murky world of foreclosures and title fraud by asking their city attorney to draft suggestions for beefing up the city’s code on abandoned property. The city also took steps to unravel the property’s ownership, and decide once and for all, who should live in the house at 601 Sunset Dr.

“Our issue, and it’s a complicated issue, is who is the owner and who has the authority to allow these people on the land,” said City Attorney Craig Leen. “We’re still trying to figure out the chain of title because it’s so complicated.”

The sprawling, four-bedroom house with a home theater and marble floors, which sits on an 31,000-square-foot lot just down the street from CocoPlum, has a dicey history. Built in 1953, it first went into foreclosure in 1997, property records show. Damian Echauri, a former candy seller and now a distributor for Green Mountain Coffee, bought it the following year.

“I redid the whole thing: the roof, the floors, the pool, the landscaping, three central ACs,” Echauri said. “That house was impeccable.”

But five years ago Echauri and his wife divorced. His wife, he said, got 75 percent of the house and he took 25 percent, with the understanding they would sell the house and divide the profits. Then his ex-wife, he said, stopped paying the mortgage.

Here’s where things get messy.

Property records still list the Echauris as the owners. However, in September 2009, Miami-Dade Circuit Judge Maxine Cohen Lando ordered the Echauris to pay Citibank $296,200.93 after the bank filed for foreclosure. In April 2010, the judge vacated the foreclosure and their note was reinstated, records show.

“We don’t know how or why,” Echauri said.

The house, meanwhile, sat empty. Then in September 2012, Lissette Denice Lima, a 37-year-old designer who said she was renting a room at the house, called the police. Lima told police her landlord, Jonathan Alvarez, wanted $310 to pay the electric and water bill.

Police determined that “the home was in foreclosure and that both parties appeared to be squatters.”

Lima, who could not be reached for comment, told police she was moving out.

Echauri said he did not learn the house was occupied until November 2012, when his son spotted a listing on Craigslist for a room for rent. His son called Alvarez to look at the room, and the father and son headed over to confront the occupants. Echauri also called police.
In their report, police noted that Alvarez said he pays rent to his mother, who pays rent to “a guy.” They told Echauri he needed to take the proper steps to evict the family. In the meantime, they arrested Alvarez, 27, on an outstanding traffic warrant.

“The police told me I could not go in, that I had to go through a long process and one even laughed and said I had to get in a long line,” Echauri said.

Police were called to the house again on Dec. 29, when another tenant complained that Ramos, his wife and her son broke into her room and threatened her with their dog, according to the police report. Ramos says the victim made up the claims and that they in fact had called police because they believed the tenant was using drugs.

Police arrested Ramos for aggravated assault for a deadly weapon, and charged Jonathan Alvarez with burglary to an occupied dwelling, assault and criminal mischief. The charges were dropped in both cases.

Proving ownership and the right to inhabit a property can be a tricky matter, Leen explained.

“The police aren’t fact finders. They’re not supposed to look at leases and figure out which is the better one,” he said.

Indeed, after Tuesday’s commission meeting, Leen and an attorney working with the city found a warranty deed recorded with the clerk of court showing Echauri sold the house to Prescott Rosche LLP in January 2012. But Echauri said Tuesday the deed was a fraud and his signature on the document was forged.

“I could record a deed for the Brooklyn Bridge. They’ll take anything,” said attorney Jordan Bublick, who handled Echauri’s filing of Chapter 7 bankruptcy in 2008.

In fact, Alvarez’s mother, Ana, said Tuesday the family signed a lease. She and Ramos said Jonathan Alvarez originally found the house through a real estate agent and moved in with his wife and two young children. When the couple split, Ramos said he and Ana moved in to the rambling house about a year ago to help out her son. He said they paid rent of $1,500 a month for the first six or seven months, but when they learned the house was in foreclosure, they stopped.

Ana Alvarez said she tracked down the bank, Chase, and was told as long as they maintained the property, they were allowed to stay. Chase paid the 2012 tax bill of $20,460.15 on the house, records show.

But the couple could not provide a name when asked to whom they paid rent and could not provide a lease.

“They say we’re squatters, which isn’t true,” Ramos said. “Until the bank comes and tells us to leave, we’re not going anywhere.”

But unless they can produce a lease, Leen says the family’s days living in luxury may be numbered.

“If they can’t show us one, we will take any legal means we can to see that this ends,” he said.

http://www.miamiherald.com/2013/02/06/v-print/3219454/squatters-living-in-million-dollar.html